



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

BRARIES



6998 4

HOURS - 9 A. M. TO 6 P. M.
THE NEW YORK PUBLIC LIBRARY
CIRCULATION DEPARTMENT

CENTRAL COLLECTION
5th AVENUE AND 42nd STREET
Room 100

Anyone having a home or business address in the City may borrow books for home use. Borrower's cards are issued at any Branch in accordance with the regulations of the Library.

Adults may borrow at one time six volumes (only one of which shall be a new and popular book) and a magazine. Children may borrow two volumes at one time.

Books may be retained two weeks unless "one week book" is stamped on the flyleaf of the volume. Any two-week book, except such as are marked "not renewable," may be renewed for an additional two weeks within seven days after the expiration of the original time-limit.

For books kept over time a fine of one cent for each day is incurred. Such books, if not returned promptly, will be sent for **AT THE COST OF THE BORROWER**, who cannot take another book until all charges are paid.

Pictures may be borrowed through a Branch or at Room 100, Central Building. They are charged on the borrower's card for two weeks.

A fine of one cent a day is incurred for each picture not returned or renewed. A charge of five cents is made for each picture damaged.

The Library hours for the delivery and return of books are from 9 a. m. to 6 p. m. on week days, except holidays.

347.6 H


49562

KEEP THIS BOOK CLEAN
DO NOT TURN DOWN THE LEAVES

...ers fading this book pencil-marked,
...warrantably defaced,
...ion





- 
1. Marriage and The church
 2. Marriage, Consanguineous and affinitive
 3. Name (Pusey, Edward)

1-2-ED



BY THE SAME AUTHOR.

PEACE THROUGH THE TRUTH. VOL. I.

New Issue.

BURNS AND OATES, 17, Portman Street.

SERMONS BY FATHERS OF THE SOCIETY OF
JESUS. VOL. II.

BURNS AND OATES.

MANCHESTER DIALOGUES. FIRST SERIES.

BURNS AND OATES.

THE SILENCE OF CHRISTIAN TRANSFIGURATIONS.

*A Sermon preached at the Church of the Immaculate
Conception, Farm Street.*

BURNS AND OATES.

THREE LECTURES ON PAPAL INFALLIBILITY, IN
REPLY TO HIS LORDSHIP THE PROTESTANT BISHOP OF
MANCHESTER.

WALKER, Manchester.

THE CLAIMS OF THE ANGLICAN ESTABLISH-
MENT TO BE THE REPRESENTATIVE OF THE
PRIMITIVE CHURCH, TESTED BY THE HISTORY AND
ACTS OF THE COUNCIL OF EPHEBUS. *A Sermon preached
at S. Werburga's, Birkenhead.*

ROCKLIFF, Liverpool.



PEACE THROUGH THE TRUTH.



SECOND SERIES.



Peace through the Truth;

OR,

ESSAYS ON SUBJECTS CONNECTED WITH
DR. PUSEY'S EIRENICON.

BY

REV. T. HARPER, S.J.

PROFESSOR OF PHILOSOPHY AT THE SEMINARY, STONYHURST COLLEGE;
LATE PROFESSOR OF THEOLOGY IN THE COLLEGE OF S. BEUNO, N. WALES.

Second Series.

PART I.

ἡ δὲ ἀνωθεν σοφία πρῶτον μὲν ἀγνὴ ἵστιν, ἔπειτα ΕΙΡΗΝΙΚΗ.

S. James iii. 17.



LONDON:
BURNS, OATES, & CO., 17 PORTMAN STREET, W.
AND PATERNOSTER ROW, E.C.

1874.

EAUB
32926

THE NEW YORK
PUBLIC LIBRARY

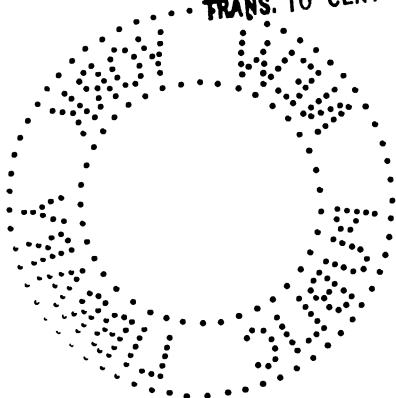
251723B

ASTOR, LENOX AND
TILDEN FOUNDATIONS

R 1943 L

WYMAN AND SONS, PRINTERS,
GREAT QUEEN STREET, LINCOLN'S INN FIELDS,
LONDON, W.C.

TRANS. TO CENTRAL RESERVE



IN WHOSE GLORIOUS PONTIFICATE

Three New Gifts have been granted to the Church,

**THE DOGMA OF THE IMMACULATE CONCEPTION, THE UNIVERSAL
PATRONAGE OF S. JOSEPH, THE DOGMA OF
PAPAL INFALLIBILITY;**

IN WHOSE DOLOROUS PONTIFICATE

Three Old Enemies have waged New War against the Church,

LICENSE OF OPINION, HATRED OF DOGMA, CONTEMPT FOR AUTHORITY

IN WHOSE MODEL PONTIFICATE

Three Virtues have been, by new example, taught the Church,

**MEEKNESS AMID INSULTS, PATIENCE UNDER INJUSTICE,
FORTITUDE AGAINST AGGRESSION,**



PEACE THROUGH THE TRUTH.

Second Series.—Part I.

DR. PUSEY'S FIRST SUPPOSED PAPAL CONTRADICTION,

OR

*The Levitical Prohibitions of Marriage in their relation to the
Dispensing Power of the Pope.*

- I. THE PROLOGUE.
- II. FUNDAMENTAL PRINCIPLES.
- III. THE ISSUE, containing a detailed examination of
*Dr. Pusey's evidence respecting marriage with
deceased wife's sister.*
- IV. DOCTRINAL POSTIL.
- V. THE EPILOGUE.



P R E F A C E.

IF the composition of a preface, even under ordinary circumstances, is beset with difficulties, those difficulties are considerably enhanced, when the duty falls to its lot of introducing to public notice an intermediary volume in a series. For it must of necessity look back, look on, and look forward; since, in order to do its work efficiently, it will have a word to say about former, present, and future volumes. Should it moreover so happen, (as it does in the present instance), that the subject-matter of the respective volumes is distinct and of a widely different character, the task becomes proportionably heavier; nor can the author well avoid its assuming the form of a more or less miscellaneous collection of notes. It is clearly impossible, in such case, to aim at any unity of idea; and the most that he can hope to exhibit is a certain unity of order.

With this object in view, I propose to place before the reader certain facts, which he has a right to know, touching my first volume.

First of all, then, there are two important *errata* which I desire to correct on this the first fitting opportunity that has presented itself since the publication of the work.

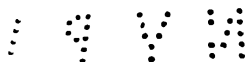
In the Essay on the Immaculate Conception a document will be found to have been produced in the shape of a deed of gift, bearing the date of A.D. 780.¹ In Appendix B an exact transcript was given of this remarkable relic of antiquity; and there can be no doubt that the supposed evidence which it afforded to the existence of a popular belief in, and

¹ Peace through the Truth, v. i. p. 353.

devotion to the Immaculate Conception of our Lady in the eighth century, was of more than ordinary weight, so long as its genuineness was above suspicion. Doubts, however, had been already raised, (as we have been since informed), by a learned Bollandist touching its authenticity, in a contribution of his to the *Études* which had appeared previous to the publication of my first volume. Unfortunately it had not come under my observation. However, it now seems to be certain that the document in question is a simple forgery, yet so skillfully contrived as to have taken in a no less practised and competent critic than Father Ballerini, from whose *Sylloge* in fact I had taken it.

I, therefore, beg the reader to consider that, in desire and intention, those pages of my work, which have been unconsciously disgraced by so detestable a fraud, are entirely obliterated; while, at the same time, I wish to express, in the most emphatic way, my personal abhorrence of the imposture. In doing so, I am as confident as I can be of anything, that I am only echoing the universal sentiment of all true Catholics. Who, that is not dead to every moral principle, can for a single moment imagine that the cause of Him Who is the Truth can be otherwise than defiled by the pretended advocacy of an impudent and deliberate lie? It is this which gives to the transgression, which would, under any circumstances, deserve severest reprobation, its special power for evil. Comparatively slight scandal is caused by the constant repetition of such patent inventions as the Hungarian *Fluch formular*, or the *monita secreta* composed for the Society of Jesus by its scarcely ingenious enemies; because one is perfectly aware that a false religion would soon be starved out, unless it were perpetually fed on falsehoods. But that any child of the Church should ever venture to offer the spotless Spouse of Jesus Christ so foul a meal!—let the inspired words of an Apostle serve to express our feelings, and, while expressing, save them from excess, “*Quæ participatio Justitiæ cum iniquitate? Aut quæ societas Luci ad tenebras? Quæ autem conventio Christi ad Belial.*”¹

¹ 2 Cor. vi. 14, 15.



Another less important mistake has been made in the same Essay. Misled by the statements of De Feller, I have confounded Cardinal John Torquemada with his nephew Thomas Torquemada, the well-known Inquisitor.¹ I owe a debt of gratitude to Father Ryder, of the Birmingham Oratory, for having called my attention to the error; the more so, because certain valuable remarks made by him in his correspondence with me about this matter enable me to supplement what I have there written on the subject of Cardinal Torquemada's supposed testimony against the doctrine of the Immaculate Conception.

"Granted," writes Father Ryder, "the [substantial] genuineness of the work, it cannot be put forward as the *dernier mot* of Turrecremata upon the subject. It is not a Theological treatise so much as the case of the *Promotor fidei* or devil's advocate, such as you find in a Canonization process. His real judgment on the doctrine we may learn with much more probability from his sanction of S. Bridget, with the *pros* and *cons* of whose case he was entrusted." . . . "Is it likely that the great champion of S. Bridget who, having been formally entrusted by the then orthodox Council of Basle with the examination of her works, (wherein she strenuously supports the doctrine of the Immaculate Conception), and having, as he says, carefully examined them point by point, declared them to be, (if properly understood), holy, and true, and consonant with the doctrine of the Saints, and such as God might reveal,²—is it likely that he should have really esteemed a doctrine heretical which, in approving S. Bridget, he had done so much to propagate?"

The justice of these remarks is so evident, that one is naturally surprised to find Dr. Pusey occupying sixty pages of his second volume with an elaborate analysis of the Cardinal's brief, unless indeed his object was to bring out in strong relief the principal objections to the doctrine which were

¹ *Peace through the Truth*, v. i. pp. 379, 381.

² See his prologue to the *Rev. S. Birgitta*, (Herman's Edition), and the *Life of Turrecremata* (Rocaberti, *Bibliotheca Pontificia*).

made by its adversaries in the earlier part of the fifteenth century.

Ere concluding this *personal* reference (as I may term it) to the first volume, I desire to thank the Catholic Hierarchy in this country for the many expressions of their paternal commendation ; and, in an especial manner, the Bishop of Birmingham, whose gratifying letter I should have asked his Lordship's permission to make public, had not the warm terms of approval been such as to deter their recipient from making the application. I also feel bound to express my sense of the large-mindedness which, (with the exception of those that proceeded from a particular school of Anglicanism), distinguished the non-Catholic reviews of my late work ; and I must particularly signalize, in connection with these remarks, one periodical of deservedly great authority, the ' Westminster Review,' from whose hands I had least right to expect gentle treatment, owing to the marked divergence of our respective views on most matters of vital importance. The one exception, to which I have referred, afforded me subject neither of surprise nor of concern ; since I could hardly expect that my labours would be peculiarly palatable to those, against whose ecclesiastical theories and position they were professedly directed. Indeed I may say that their declamatory protests were to me an occasion for sincere self-congratulation ; since I felt sure that if my position had not been impregnable, such able advocates would have confronted me with something approaching at least to an intelligent refutation. I can only hope that this present volume may merit a similar testimonial to the supremacy of truth.

Considering the momentous issues of the controversy, I am unable to refrain from venturing a remark or two concerning the polemical fortunes of my previous work. Every one who has read it must be well aware that I was forced to point out, over and over again, the absence in Dr. Pusey of those qualifications which are absolutely indispensable for any one who takes upon himself to discuss grave questions of Theology. I could not, of course, expect that Dr. Pusey would remain silent under such serious imputations on his accuracy and Theological acquirements ; and I was not, therefore, sur-

prised when public intimation was given that the Oxford Professor was buckling on his armour, and preparing to descend into the arena. A clerical friend of his at Brighton was, (if I am not mistaken), the first to publish the news. He gave the welcome information that my book was doing much harm in various quarters; and, he added, that he was in consequence authorized by Dr. Pusey to announce his intention of publishing a reply to its contents. Subsequently Dr. Pusey himself volunteered a similar promise, couched in the ambiguity of the following Scriptural expostulation;—"Have patience with me, and I will pay thee all." He was so far true to his word as to take the binder of his second volume into his particular confidence, giving him a printed and published order to leave room for certain "strictures on Mr. Harper's work." Nor was the idea abandoned, though its realization was delayed. For when the second volume appeared in binding complete, albeit the strictures were still *in petto*, yet their place was supplied by the following suffix to the body of the work; "By the same Author. *In the press.* Eirenicon. Part III. A second letter to the Very Rev. Dr. Newman, on the possibility of Corporate Re-union and of Explanation on the part of Rome. With an Appendix in answer to the Rev. T. Harper's Strictures." In this second announcement the Doctor was in a milder mood; for he condescended to acknowledge my orders. What however was of more importance, he revived the general confidence in the speedy appearance of his long-expected reply; since information was given that it was already in the press. That was in 1869. We are now at the close of the year 1874; and the press has not yet given birth to the work. I hope I may say, without offence, that the whole procedure recalls to one's mind the words of the memorable Pym, "I dare not fight; but I can wink, and hold out my iron. It is a simple one; but what though? It will toast cheese; and it will endure cold as another man's sword will; and there's the humour of it."

Meanwhile, still hoping against hope that Dr. Pusey may yet persevere in his intention, I respectfully solicit his attention to the following questions.

- i. He has maintained that a difference of meaning was

attached to the words, *substance* and *accident*, by Catholic Doctors after the Council of Trent, from that which was prevalent in the Schools before that Council. I have denied the assertion, and produced my evidence. Does Dr. Pusey retract that statement or not? If he still maintains it, will he be good enough to point out its compatibility with the authorities that I have quoted?

ii. He has maintained that the medieval Doctors identified *substance* with *matter*. I have denied it. Will he either retract or prove his assertion?

iii. He has asserted that the Roman controversialists denied the existence of any outward part in the Holy Eucharist. I have shown that they taught the contrary. Will he either retract or prove his assertion?

iv. He has stated that the remaining of the substance of the elements was an open question in the Church till the beginning of the fifteenth century, and quotes (among others) Biel, Melchior Canus, Alphonso de Castro, Hurtado S.J., Vasquez S.J., Suarez S.J., in proof of his proposition. We have emphatically denied the truth of his assertion and put all his supposed witnesses out of court. Does he intend to retract or still to maintain his *thesis*? If the latter, will he be good enough to cross-examine his witnesses and, at the same time, explain how he manages to squeeze the afore-named Doctors within his chosen chronological limit?

v. I have accused him of misrepresenting, (I need hardly add, unconsciously), the opinion of Guitmond. Is my accusation true or false?

vi. I have charged him with having, in the course of his argument on this point, confounded scholastic questions, in themselves perfectly distinct. Am I right or wrong?

vii. I have likewise accused him of having thrice quoted objections, introduced by the Doctors from whom he has copied them for the simple purpose of refutation, as being the true representatives of the opinion which those Doctors maintained. Will he avow the truth of my charge, or else convince the public that these passages quoted from Durandus, Scotus, Bassolis, are in very truth the expression of their own opinion?

viii. Is it true or not that these three Doctors, in their resolution of the question, openly contradict Dr. Pusey's proposition, and refute the very objections which have been quoted as conveying their own judgment?

ix. I have accused him of having shifted a pronoun from its place in a quotation which he has made from S. Hilary, in consequence of which a novel meaning, quite alien to the Saint's argument, has been fastened to his words; and, in like manner, of mistranslating, (in a passage taken from Clement of Alexandria), the Greek words, αἷμα τῆς ἀμπέλου, as "*blood of the grape*" instead of "*blood of the vine*"; by which mistranslation his own interpretation of the passage was apparently justified. Are these charges true, or are they not?

x. I have accused him of having quoted Spondanus as standing godfather to the genuineness of Pope Gelasius' supposed work *On the two natures*, whereas the Annalist says precisely the reverse. Am I right or wrong?

xi. I have shown that Dr. Pusey misunderstood what Catholic Theologians meant, and still mean, by active and passive conception. Did such misunderstanding exist in his mind, when he wrote his *Ehrenicon*? Or was I mistaken?

xii. I in particular signalized his supposition, that the body could be cleansed from original sin before the soul was infused into it, as an absurdity, and as betraying a lamentable ignorance touching the nature of original sin. Is he prepared to maintain its possibility? If so, will he tell us what sort of a thing the original sin is that can square with such a hypothesis? If he holds more or less the Catholic teaching as to its nature, will he tell us how an inanimate body can be subjected to a purely spiritual privation?

xiii. I have in like manner selected for condemnation seven statements of his with regard to the doctrine of the Immaculate Conception. Is he still ready to maintain them? If so, will he expose the futility of the reasons which I have given for rejecting them?

xiv. I have declared other five statements which he has made concerning the Vulgate reading, *Ipsa conteret caput tuum*, to be utterly unfounded; and have given my reasons. Is he prepared to maintain them?

xv. I have shown that his alarmed fancies about the new Office of the Immaculate Conception are a mere bugbear. Will he confess as much ?

xvi. I have denounced his theory of the Church's unity, as involving by logical necessity the abandonment of the Church's claims to be a visible body ; and have shown that his supposed Patristic authorities teach precisely the reverse of that, for proof of which they have been produced. Does he admit or deny the justice of my conclusion ?

xvii. I have brought serious charges against his view touching the nature of the change effected in the Holy Eucharist, and have shown that it excludes the very notion of change. Is he prepared either to retract or defend his opinion ?

These, taken together, amount to a considerable debt ; and he has promised, if we would but have patience with him, that he would pay us all. But, meanwhile, there is such a thing as the statute of limitations.

They, however, are only some of the principal items in my book. There are very many others which, for his convenience, I have italicised in the Index of my first volume.

When he has settled that account, I would venture to commend to his notice some further additions to his account in that part of the present volume which I have called the Issue, as well as in the Prologue and Epilogue. Perhaps he will explain himself concerning the Council of Trullo, and assist us in understanding his translation of the Tridentine Canon ?

Humanum est errare. No man can claim entire exemption from a common infirmity. But it is one thing to fall into an occasional mistake or inaccuracy ; quite another, to be perpetually caught tripping, and on well-nigh every subject. It is only just, when an author has been publicly arraigned on definite and manifold charges of inaccuracy and of general incompetency for the task he has unwisely undertaken, and when sufficient proof has been offered in support of those charges, that he should either plead guilty, or put in a demurrer. Surely it is not quite the thing to suffer a default.

I beg beforehand to deprecate all those doubtlessly sincere euphemisms about the *ungrateful* and *hateful* task of con-

troversy and the *loathing* it causes, as ill-fitted for the occasion. For I venture to express an opinion that, when an author goes out of his way to assail the doctrine, Canon law, devotions, and dignitaries of the Catholic Church, and is called upon, in consequence, to justify his accusations and revindicate his damaged reputation as a scholar, theologian, and historian, it is unfortunate, for himself at least, and a heavy blow to the cause which he encumbers with his help, that he should suddenly awaken to the conviction of his being 'a man of peace, and escape from the shock of war in the borrowed garments of a Quaker.

I can only say that if Dr. Pusey should be moved by my appeal to hasten the issue from the press of that third volume which has been lingering for the last five years in the printer's hands, and should effectually clear himself therein of any one or more of these indictments preferred against his *Eirenicon*, I will retract and apologize for such unfounded charge, or charges, as publicly as I have made them.

So much for the first volume ; now for what it behoves the reader to know about this, the second.

The good Providence of God, by exacting from me an abstinence, necessary for a time, from more active and exhausting employments, afforded me this year a long-coveted opportunity for the composition of this second part of my reply to the *Eirenicon*. The material, (much of which had been collected years before), has been obtained from different libraries accessible in the various places where I was stationed. Owing to this circumstance I have found it impossible in every case to verify my quotations in their passage through the press, although these exceptions are comparatively few. The rest have been collated with great care. The old Latin adage, *Non omnes omnia possumus*, holds good equally in the case of libraries as in that of men ; so that unless one were within convenient distance of, and unfettered in liberty of access to such national institutions as the Bodleian Library or that of the British Museum, verification of every passage is rendered practically impossible. For how can we reasonably expect that every authority, cited in a work which has been compelled to traverse many roads and sometimes by-paths of literature

should be found within the limits of one college library, however generously its shelves may have been supplied ?

There is another considerable difficulty, connected with this part of an author's labours, which arises from the diversity in different editions not only of pagination or division of chapters, sections, numbers, &c., but likewise of readings. If he has not been careful to note down invariably the edition which he has consulted, the reader is sure to be puzzled, even if he does not entertain suspicions of the writer's good faith. I have, therefore, felt myself bound to be particular in this matter; and, should there be discovered any exception to my general practice, I trust that my readers will, in their charity, attribute it to one or other of the causes just mentioned.

I fear that the subject provided to our hands by Dr. Pusey's first supposed Papal contradiction will not prove to be of such general public interest as the more popular subjects which have been discussed in the first volume. Nevertheless, for those whose natural bent leads them to higher fields of thought than the topics of the day, and who are so unfashionable as to preserve a belief in the supernatural constitution of the Mosaic economy and of the Christian faith, questions touching the nature and attributes of Divine law, the relation of the Sinaitic code to the Church of Christ, the continuance or abolition of the Sabbatical observance, the nature and history of dispensations, the motive causes of matrimonial prohibitions within certain degrees of relationship, will not perhaps be without their interest.

It is just possible that a more general, though adventitious interest may be awakened in the public mind, owing to the fact that the subject-matter of this volume is intimately connected with certain proposed legislative changes in the English law of marriage, which, for a long time, have been perseveringly advocated by an influential section of the community, inside as well as outside the Houses of Parliament. The reader will perceive that I have carefully avoided, throughout this work, the slightest reference to the political bearings of the question. *Ne sutor ultra crepidam*, is a motto which I have always regarded with sincere respect. I consider the practical direction which it contains to be of inestimable value,

more particularly in an age distinguished for its intellectual pretension, the shallowness of its encyclopedic knowledge, and the consequent presumption of its criticism. It seems to me that Politics are a craft requiring a long apprenticeship like other crafts; and standing peculiarly in need of great experience, as well as of more than ordinary intellectual gifts. Political problems have to be determined, not only or even principally in the abstract, but in the concrete. Many of them are capable of comparatively easy solution, when considered in themselves and apart from surrounding circumstances; but difficulties almost insurmountable not unfrequently arise from their entanglement with conflicting interests, from the hearings of previous legislation, from the violence of popular feeling, nay, —to descend so low,—from claims of party with its recognized traditions. In all such matters I own myself a novice. But, even were it otherwise, I feel bound, by the teaching of that religious Order which claims my fealty, to abstain from any interference by word or deed with those games which are being played out by conflicting parties on the political chess-board.

With this proviso, it may perhaps be permitted me diffidently to offer a few suggestions for the consideration of those few Catholics to whom has been intrusted, conjointly with others, the grave responsibility of legislating for the nation.

It may be taken as an undoubted fact that Papal dispensations for marriage with a deceased wife's sister are not uncommon. It is a no less notorious fact, that the present law of England pronounces the offspring of such a marriage to be bastards and, by so doing, subjects them to serious civil disqualifications. Would not a repeal of the law touching this degree of affinity be a real advantage to those Catholics who at present suffer from its provisions?

I freely own that, as Englishmen, we are bound, in forming a judgment touching the expediency of such repeal, to take into serious consideration the effects of the proposed change, not on Catholic interests only, but on national morality and the true interests of the whole kingdom; and, if I were once convinced that it would be detrimental to the latter, nothing would induce me to favour it, even though it might be of some

advantage to the former. But if the statutes have already legalized the marriage of first cousins, the question naturally arises, whether the morality of the people would be liable to deterioration, if they should also legalize marriage with a deceased wife's sister? Both are subject to simply Ecclesiastical prohibitions; and such they will remain to be, (so far as Catholics are concerned), whatever course of legislation may be adopted. Neither of them has ever been forbidden by any Divine law at any period of the world's history.

I have read most of the speeches which have been made on the question by our Catholic representatives in Parliament; and while I have admired the moral and religious sentiment that animated them, I have nevertheless failed to discover in them anything which looks like a solid argument. I may, perhaps, be allowed to give an illustration of what I mean, taken from the less recent debates on the subject; for my remarks will thus be safe from any suspicion of personality.

One of the many brilliant efforts of an orator no less distinguished than Mr. Shiel was directed against this contemplated change in the marriage law on the second reading of the bill, March 7th, 1850. It is from this speech that I purpose taking my example; and I am sure that my readers will pardon me for introducing them to the following choice specimen of rhetorical power:

"I shall apply myself," these are his words, "exclusively to the moral and domestic results of the proposed measure, and inquire what will be its effects on the wife, the husband, and the prospective bride, whose pathway to the altar is to cross her sister's grave. . . Upon her (the wife's) deep and still affection no dark conjecture is allowed to cast a shade. . . . But upon the wife's sister what sort of influence will be produced by this measure? She now regards her sister's husband as her protector and her friend. Into her unimpassioned gratitude no undue admixture of tenderness is infused. But if she have a contingent, or rather vested remainder in the pillow upon which her sister's cheek may soon be coldly and lifelessly laid,—if she shall be taught to associate her wedding garment with her sister's shroud, I am afraid that the spirit of conjugal enterprise will be awakened. She will have recourse

to all the expedients of captivation. All that she says, and looks, or does,—all her gestures, her attitudes, and her intonations will be swayed, in her intercourse with her sister's husband, by that spirit of speculative endearment which women can so readily and almost instinctively assume. . . . Rather than do the slightest harm, I should hold the religious feelings of the whole country in disregard ; but I would not, on the other hand, wantonly and gratuitously run counter to that feeling, for the sake of a more than hazardous innovation, which breaks down the moral fences that protect your homes, and to which Ireland Catholic and dispensing, Scotland Calvinistic and austere, and the majority of the people of England,—of England half Calvinistic in her creed, but more than half Catholic in her usages and in her feelings,—are concurrently and strenuously opposed."

No one can deny that the passage before us, formerly uttered in the House with all his wonted energy of delivery by one of whom Stonyhurst may be justly proud, is a beautiful work of art ; but when we apply to it the cold touchstone of reason, its pathos remains, indeed, but all power of persuasion disappears.

It is true that in the event of a marriage such as Mr. Shiel is alluding to, the bride's pathway will be over the deceased sister's grave ; but whenever a widower marries again, the chosen one's pathway to the altar must cross the same grave. And, if the departed lady could signify her wishes on the subject of her husband's choice, it seems to me that she would be more likely to cast her eyes upon one who is related to her children, and has in all probability known them from their birth upwards, than upon a stranger who would be prone to carry with her to the family hearth the proverbial feelings of a step-mother.

Again : the orator supposes, in his fervid picture, the idea and intention of marriage with her brother-in-law to have been entertained by the new bride, previous to her sister's death. But surely such a hypothesis is a painful reflection on the sex in general ; and if such adulterous desires should ever be allowed deliberately to germinate in the will, the heinousness of the sin would be so great under any circum-

stances, that the fact of its existence in the breast of a sister-in-law could augment but little the wickedness of the thought or purpose. Such a woman as Mr. Shiel imagines would be a dangerous pest in any family with which she might chance to hold familiar intercourse; and we may reasonably hope that such a dishonour to her sex is rarely to be found among the daughters of England.

Once more: It is most true that, if no wrong is done thereby, the feelings of the great body of the people, even though reasonless, ought to be respected; more particularly when they are directed against contemplated changes in the law. For all change is in itself an undoubted evil, unless it should prove to be the only remedy for a greater evil. But the advocates of the proposed measure would probably object that there is a manifest wrong done by the law, as it exists at present. For,—not to dwell over again on the injustice apparently inflicted on those Catholics who have contracted such a marriage, under cover of a dispensation from Rome,—it might be urged that circumstances may not unseldom arise, in which the contract in question would be expedient, if not an absolute duty. Now a Catholic in this conjuncture has his remedy; for it is precisely in order to provide for such contingent cases, that Christ our Lord has given the keys to His Vicar. But when England withdrew itself from the centre of Catholic unity, no dispensing power was appointed in the Pope's place; so that it would now require an exceptional Act of Parliament, with all the delay, risk, and expense, ordinarily attaching to any procedure in a deliberative assembly, if legal sanction is to be obtained for the marriage.

A more serious and (if it were well founded) more incisive objection has been made to this proposed change in our Marriage-laws. Its opponents have urged that, if effected, it would gradually engender a deplorable laxity in the public morals. For at present, they argue, any matrimonial contracts of this kind are looked upon with all but universal abhorrence; whereas, if marriage with a deceased wife's sister were once sanctioned by the law, not only would a sentiment so wholesome be weakened in that particular instance, but, the door once opened, it is more than probable that a demand

would soon be successfully made for the legalization of marriage in other of the prohibited degrees. This argument would be peremptory in the judgment of all right-minded persons, if it were quite plain that the conclusion necessarily followed from the premisses. But might it not with fairness be objected that, though human law can undoubtedly do a great deal, it nevertheless cannot create or destroy moral or religious instincts? S. Austin tells us in his *De Civitate Dei* that in his day, though the Imperial laws had till lately sanctioned the marriage of first cousins, yet the conscience of the people had held them back from taking advantage of the permission. Is it, then, to be supposed that a deep religious sentiment, pervading the mind of perhaps the most Catholic people in the world, (I refer, of course, to our Irish brethren), could grow fat or lean under the pressure of any bill passed by the British legislature? If, indeed, the contemplated measure were imperative, the case would be different. But it is simply permissive; nor could it possibly be otherwise. Suppose, therefore, the existence of a legal permission to contract such marriage; surely the moral sentiment of Catholic Ireland would continue to be directed then, as now, not by Acts of Parliament, but by the Voice of the Church.

The objection, however, has been carried yet further. The proposed measure has been represented in some quarters, as being of its very nature a wanton insult offered to the eternal law of right. If it were really so, there would no longer be any room for hesitation. Catholics would combine, as one man, in the attempt to save their country from the infamy of so heinous a transgression. But who does not see that no true Catholic could conscientiously maintain an error which is now universally condemned by the Doctors of the Church? Besides, the objection could not stop here. It must proceed, by logical sequence, to impeach the validity of all the Papal dispensations which have sanctioned marriages in this particular degree. For if the contract were in strict violation of the natural law, not all the Popes together, from S. Peter downwards, could under any conceivable circumstances make it valid.

Thus much I have ventured to suggest tentatively and with the utmost diffidence, looking at the controversy in its moral and religious bearings,—the only way in which I am entitled, or can consent to regard it; while I leave to those whose duty it is, and whose qualifications for the task I should be the last to question, the determination of its political expediency.

I have only now to add, (for what regards the present volume), that my warmest thanks are due to my dear friend Father Purbrick, Rector of Stonyhurst College, and to Brother Stanley, of Roehampton, who have both assiduously helped me in passing the present volume through the press, spite of the continuous pressure of duties which were more than sufficient to task their energies and occupy their time. I wish also to express my grateful sense of the advantages which I have experienced from the London Library. Circumstanced as I was during the time that this work was written, it would have been impossible for me to have continued my labours, unless I had there obtained access to books which were otherwise practically beyond my reach.

One word about the plan of the volumes that are to follow, and I have done. It seems to me that there will be no further necessity for occupying the reader's time and attention with an examination of Dr. Pusey's Theological statements. While, therefore, I propose to take his remaining "Papal contradictions" as my theme, I intend, if God grants me life and leisure, to dislocate them from the *Eirenicon*, and to treat them as anomalies which seem to interfere with the even course of Ecclesiastical history. In other words, the plan which I contemplate is, first of all to bring out into relief the continuous evidence, offered to us in the pages of Church history from the earliest times down to the epoch of the great Eastern schism, in favour of the practical recognition by the Catholic Church throughout the world of the Pope's Supremacy and Infallibility; and afterwards to confront the exceptional facts which have been adduced in supposed contravention of the latter.

I have been informed that this question is the great stumbling-block which opposes itself to the reconciliation of a considerable number among our fellow-countrymen with the

one Church of Christ; and I believe it. If other evidence were wanting, the great literary surprise of the past month would be sufficient to approve the statement; for it affords us sufficient evidence that brilliant powers of mind, combined with a lofty nobility of heart and will, are insufficient to secure their possessor from the fatal bias of early education, or to make up for that want of acquaintance with the genuine Annals of the Church, on which alone Anglicanism depends for a further protraction of its waning life. In that remarkable and deeply interesting contribution to *The Contemporary Review*, the following sentence, naturally enough, arrested my attention:

“At no time since the bloody reign of Mary has such a scheme” (*i.e.* of Romanizing the Church and people of England) “been possible. But if it had been possible in the seventeenth or eighteenth centuries, it would still have become impossible in the nineteenth; when Rome has substituted for the proud boast of *semper eadem* a policy of violence and change in faith; when she has refurbished and paraded anew every rusty tool she was fondly thought to have disused; when no one can become her convert without renouncing his moral and mental freedom, and placing his civil loyalty and duty at the mercy of another; and when she has equally repudiated modern thought and ancient history. I cannot persuade myself to feel alarm as to the final issue of her crusades in England, and this although I do not undervalue her great powers of mischief.”

I should be loth to express the feelings of pain and regret with which I read such words, flowing from the pen of one whom I had regarded, and still regard, as the greatest name which modern times have added to the roll of English statesmen. I felt as certain as I could be of anything which fell beyond the range of my own self-consciousness, that a character so high and noble, so disinterested, so markedly earnest in its convictions, would have scorned to insert, (as if of set purpose), such fierce and insulting words as these, for mere purposes of political advantage; and, even if such a suspicion could have once crossed my mind, the deep and genuine piety that underlies the whole article would straightway have given it the lie.

Yet it was only natural to ask oneself what could possibly have given rise to such an unnecessary and seemingly unprovoked attack upon the Catholic Church. Was it possible that a too generous reliance on the testimony of others had been trifled with at Munich, as it was supposed to have been trifled with in Naples some years before? This might account in part for the acrid tone, but not for the substance of the calumny.

Then again, it is impossible not to recognize what is meant by "the substituted change of faith," even if Munich had not appeared in the background; that new "policy" which, curiously enough, is to be defended by the "*rusty tools*" of the past. The distinguished writer is evidently referring to the new Definition. To a well-instructed Catholic, who knows that the infallibility of the Pope's *ex cathedra* decisions on matters of faith and morals has been practically acknowledged in the Church from the beginning, it sounds curious that, by simply adding the doctrine of Papal infallibility to his *credenda*, he has "renounced his moral and mental freedom, and placed his civil loyalty and duty at the mercy of another," *i. e.* doubtless of the Pope. He would perhaps be tempted to inquire, if Mr. Gladstone can so impetuously challenge the infallibility of one, what he would have done, had he chanced to live in the Apostolic age, when he would have been summoned to submit his liberty of judgment within the same spheres of truth to the infallibility of twelve? What if Mr. Gladstone had been present at the reading of S. Paul's first Epistle to Timothy, and had listened to the words, "Guard the Deposit (of the faith), eschewing profane novelties of words and oppositions of science falsely so called"; would he have gone either to Hymenæus or Alexander, (whom S. Paul had excommunicated), for his information; and have then denounced the Catholic converts as men who had abandoned their liberty of thought and will, and placed their loyalty to the immortal Emperor, and their duty to the mistress of the world, at the mercy of a Jew?

It must be confessed that the motives of this outburst were, and are, to many admirers of the great statesman a psychological enigma. Many among us Catholics, on reading the diatribe, looked about at first to discover the unconscious pre-

sence of these new fetters by which they were enslaved ; but in vain. It was then but too natural that they, moved by a righteous indignation at so rash and baseless an accusation, should treat the splenetic outburst of a moment with a rigour and even harshness which I most sincerely deplore, and should temporarily forget, in their anger, the brighter memories of past service.

But it seems to me that the only possible explanation of this already too famous passage is, that the sound judgment of its author was overbalanced by the unexpected suddenness *to him* of the new Definition ; and that he was unable to find a counterweight in the traditions of the Church, for the simple reason that they had neither been put in his way, nor had otherwise come across him. If with that piercing and discriminating eye of his, he had studied the genuine records of early councils and the historic facts of the Primitive Church, he would have been the first to stare with amazement at his own morbid prejudice.

His is a conspicuous instance of an ignorance too common among our countrymen. Surely this fact alone affords a sufficient reason why one should spare no pains to put before him and them the facts as they stand in the annals of the past ; but the facts, as a *consistent whole*, bearing indisputable witness in their collective strength to a living practical belief in the Papal Supremacy and Papal Infallibility, which forestalls by more than a millenary the existence of the Anglican Establishment. We, Catholics, have nothing to fear from the closest and most minute examination. It is ignorance which is the great Antichrist ; and honest research, rightly intentioned, is the only antidote. This it is which we ceaselessly challenge ; yet, for the most part, in vain. The immediate prospect is, it must be owned, dark and fraught with storms ; yet there are glimpses here and there of the blue sky above. Let the beautiful words of Mr. Carlyle (which he will excuse me if I adopt as my own in a sense widely differing, perhaps, from what he intended), serve to express at once our sadness and our confidence, as heirs of the one only faith :

“ We confess the present aspect of spiritual [England] might fill a melancholic observer with doubt and foreboding. —

It is mournful to see so many noble, tender, and high-aspiring minds deserted of that religious light which once guided all such. Standing sorrowful on the scenes of past convulsions and controversies, on a scene blackened and burnt up with fire, mourning in the darkness, because there is desolation, and no home for the soul; or, what is worse, pitching tents among the ashes, and kindling weak, earthly lamps which we are to take for stars. This darkness is but temporary obscurity; these ashes are the soil of future herbage and richer harvests.”¹

All Souls' Day.

POSTSCRIPT.

Since writing the above preface, I have seen Mr. Gladstone's pamphlet on “*The Vatican Decrees in their bearing on Civil Allegiance.*”

It is with as deep a pain as I have felt for many a long day, that I find myself compelled to retract the opinion which I have there ventured to express concerning that distinguished statesman's contribution to the “*Contemporary Review.*” The obnoxious paragraph has now received an authoritative interpretation from its author; and I can only regard both text and commentary as a new move, (whether dexterous or no, the future will disclose), on the political chess-board.

I can, therefore, have no further concern with either; and my long and deeply cherished sentiments of admiration for him who penned them would lead me to strive, as far as possible, to forget that they were ever written.

I cannot, however, refrain from the expression of my poignant regret that one, who once seemed so eminently qualified to be an ἀναξ ἀνδρῶν, should have thus miserably fallen from his lofty position, and have condescended to brandish, even with bravado, the hackneyed weapons of an ordinary placeman.

¹ Essays, &c. Essay ii. On the state of German literature, T. i.

This age of ours stands over much in need of heroes,—of men truly great and greatly true, who may attract their fellows to acknowledge, and look upwards towards, something higher and nobler than themselves. When, therefore, a long and fondly cherished ideal fails in the supreme moment of trial, it is a public calamity that brings along with it, for many, the torture of a personal bereavement.

The distressing disappointment will, however, turn to good, if, while we sadly gaze upon now one, now another, popular Dagon falling headlong before the Ark of the Lord, we learn the needful lesson, even at the cost of a shock so cruel, that true heroes are the creation of Divine Grace alone.

If I, who have least right to do it, might for once be permitted to counsel my brothers in the one, only true Faith, I would remind them at this time of excited feelings and most just indignation, of the Apostolic counsel,

“BENEDICITE PERSEQUENTIBUS VOS ; BENEDICITE, ET NOLITE MALEDICERE.”¹

¹ Romans xii. 14.

November 9th.



CONTENTS.

SUPPOSED PAPAL CONTRADICTION CONCERNING THE POWER OF
ECCLESIASTICAL DISPENSATION WITHIN THE DEGREES OF
CONSANGUINITY AND AFFINITY ENUMERATED IN THE PRO-
HIBITIONS OF THE MOSAIC LAW.

PROLOGUE.

§ 1.

SUPPOSED PAPAL CONTRADICTIONS.

The unity of the Church.—Her unity twofold; unity of soul and body. (See the first series, Essay II.)—The Pope's supremacy divinely ordained for the preservation of the Church's unity of body; his infallibility, for the preservation of her unity of soul.—Intimate connection of these two Papal prerogatives.—The object of the present Essay not to prove the doctrine of Papal infallibility, but to remove difficulties.—Heresy specially delights in assailing these doctrines about the Pope.—Dr. Pusey assails them.—His statement concerning Papal infallibility.—Importance of the question (pp. 3-10).

§ 2.

A SUMMARY ANSWER TO THE FIRST SUPPOSED CONTRADICTION OF DR. PUSEY.

Dr. Pusey's objection.—Developed in form.—The answer.—Here the matter might end; but the subject, from its importance and interest, requires further examination.—Statement of prolegomena (pp. 10-13).

I. FUNDAMENTAL PRINCIPLES.

CHAPTER I.

THE DIVINE LAW, ITS PRINCIPAL DIVISIONS AND RELATION TO MAN.

Idea of law.—It may be considered *objectively* and *subjectively*.—Application of the analysis to Divine Law.—More precise idea of Divine Law.—It may be divided into *natural* and *positive*.—The natural, or eternal law first considered

in its relation particularly to man on earth.—In its relation to the inhabitants of heaven.—Objectively, it is eternal.—The *necessity* of its promulgation.—Subjectively considered, it is the natural law.—Doctrine of S. Thomas on the point.—The *nature* of its promulgation.—It is unchangeable.—In this it essentially differs from positive law of God.—The *method*, or *mode* of its promulgation (pp. 17-23).

The Divine positive Law.—Nature of positive law.—Application to the Levitical code.—Division of the Mosaic Law, following the Doctors of the School, into 1. moral precepts, 2. ceremonial, 3. judicial.—Moral precepts; their nature.—Further, and more detailed precepts necessary for the Jewish people.—Difference between ceremonial and judicial precepts.—Subdivision of ceremonial precepts into (a) those pertaining to sacrifices; (b) things sacred; (c) Sacraments; (d) observances (pp. 23-26).

Nature of judicial precepts; and agreement with, distinction from, the two other classes.—Examples (pp. 26-28).

The Sinaitic Law provisional.—The Evangelical Law of Christ.—Its characteristic excellence.—It is principally spiritual and internal.—It is not primarily a written Law, but an inner legislation of grace.—Yet, in a secondary way, it is also partly written (pp. 28-31).

CHAPTER II.

HAS THE MOSAIC LAW ANY OBLIGATORY FORCE IN THE KINGDOM OF CHRIST ?

A partial abrogation of the Sinaitic Law, universally admitted by Christians.—This is evident from the inspired Scriptures.

I. The *ceremonial* precepts are abolished.—Two difficulties.—i. *The observance of the Sabbath day*.—Protestant superstition concerning it.—Seeming reason in favour of this superstition.—Answer to the difficulty.—Notion of *rest*, as applied to God.—S. Austin's exposition.—God's Sabbath.—The Jewish Sabbath; reason of its institution.—Three other mystical reasons for its institution.—The moral principle, or dictate of the natural law, embedded in the third commandment, which is immutable.—A physical reason for its institution, which is still of force.—The institution of the Sabbath, considered as a *judicial* precept, is void now, annulled, (a) as regards the object of commemoration.—(b) as regards the mode of observance.—The institution of the Sunday in place of the Sabbath, and the precepts for method of observance, left to the determination of the Church.—The institution of the Sabbath, considered as a *ceremonial* precept, is annulled, made void in Christ.—Summary of the argument (pp. 32-41).

ii. The second difficulty; the obligation to pay tithes.—In the Christian Church it is simply an Ecclesiastical law (p. 41).

II. The *judicial* precepts are abrogated in the Christian Economy.—Proofs from Holy Scripture.—Examination of S. Paul's argument in his Epistle to the Hebrews.—Proofs from reason.—a. They are temporary applications of a moral principle.—b. repealed, as such, by Christ.—c. With the dissolution of the Hebrew Theocracy, they are useless (pp. 41-46).

III. The *moral* precepts are abrogated in the Christian Economy.—The Word of God, written as well as unwritten, apparently adverse to this conclusion.—One point certain; the moral law is of eternal obligation.—The

question is concerning the permanence of the special Sinaitic sanction.—Resolution of the question.—Reasons in favour of our conclusion.—i. The promulgation was to Jews only.—ii. The Decalogue not entirely composed of moral precepts; yet the sanction indifferently common to all, as a whole.—iii. The Decalogue did not, *as such*, oblige the Gentiles living before Christ, therefore it does not oblige them now.—iv. The New Testament announces the abrogation of the Sinaitic Law without any limitation.—v. Moral precepts explicitly included by S. Paul.—vi. The Fathers use the same general phraseology in speaking of the abrogation of the old Law.—S. Hilary.—S. Ambrose.—Lactantius.—S. Macarius.—S. Jerome.—S. Austin.—vii. The Fathers declare the abrogation of the third commandment in the Decalogue, or the precept for observance of the Sabbath.—S. Ambrose.—S. Basil.—S. Macarius.—S. Jerome.—S. Gregory the Great.—This Patristic teaching concerning the abrogation of the third commandment, inconsistent with the continuance of the Sinaitic sanction.—Two principal witnesses in favour of this opinion, a. Tertullian—Summary of Tertullian's teaching—b. The second, S. Gregory of Nazianzus—Summary of S. Gregory's teaching on the point—Scriptural, Patristic, and Scholastic expressions which seem to be opposed to it—True explanation, and solution of the difficulty.—viii. The opposite opinion derogatory to Christ, and to Christian freedom.—Conclusion of the argument (pp. 46-63).

The whole Sinaitic Law, as such, annulled, without any exception, since the coming of Christ (pp. 63-65).

CHAPTER III.

THE DISPENSING POWER.

Analytical inquiry into the nature of dispensation.—Generic definition.—Specific definition, given by Suarez (pp. 66-68).

i. With whom the dispensing power resides.—Answer of S. Thomas (p. 68).
ii. The lawfulness of dispensation.—General resolution from an examination of law in the abstract.—Particular resolutions.

1. As regards the *natural law*.—The answer twofold, because two classes of precepts in the natural law.—a. No one can dispense from its *primary* precepts.—b. No human authority—Not even the Pope.—c. God Himself cannot.—Seeming contradiction in the teaching of S. Thomas on this last point.—Solution of the difficulty.—Scriptural origin of the question.—Proof that S. Thomas does not use the word, *dispensation*, in its strict meaning.—Real sense of his words.—Objection to this solution—Answer to the objection (pp. 68-76).

Preliminary inquiry into the kinds of human action, in their special relation to their object.—Three kinds, a. indifferent actions, b. immutably determined, c. mixed.—a. Indifferent actions irrelevant to the present question.—b. Actions immutably determined in their moral nature, do not admit of dispensation:—c. Mixed actions, whose morality is not immutably determined.—Explanations and examples of such actions by S. Thomas.—So far as they are contingently related to the natural law, no dispensation required (pp. 76-78).

As regards the *secondary* precepts, if the actions are of an immutably moral character, dispensation impossible; if mixed, and only affected by the natural law, dispensation is not necessary.—If a positive law intervenes, dispensation is necessary (p. 78).

2. As regards *positive Divine Law*—Three different meanings of the term

Divine Law.—a. employed *historically*; a law, that had God for its author.—b. understood *virtually*, for an Ecclesiastical law.—So used by the Fathers.—S. Basil.—S. Gregory of Nazianzus.—Innocent IV.—In laws *virtually* Divine, man may dispense.—c. *Formally* Divine.—In positive laws, *formally* Divine, God alone can dispense.—The opinion theologically certain (pp. 78-83).

3. In human laws, Ecclesiastical or civil, human authority can give dispensation.—Summary of the whole inquiry (pp. 83-84).

THE ISSUE.

CHAPTER I.

THE LEVITICAL PROHIBITIONS; OR, AN EXAMINATION OF THE INTRINSIC EVIDENCE BEARING ON THEIR RELATION TO THE NATURAL LAW.

Dr. Pusey discusses this question of prohibited degrees of marriage at length, in his published evidence before the Commissioners *with reference to marriage with a deceased wife's sister*, and in a pamphlet, called, "*God's Prohibition*" of such marriage.—Examination of these works proposed.—Peculiarities of the Doctor's controversial style.—Instances, with running comment.—Such stilted style of writing out of place in grave Theological, or Philosophical inquiry (pp. 87-92).

The main point in the question.—The prohibitions of Leviticus xviii. proposed for discussion.—Do they form part of the natural law, or are they merely judicial precepts?—Dr. Pusey contends that they form part of the natural law.—Vagueness of his expression, *moral*; an epithet applicable to judicial precepts, as well as to the natural law.—Dr. Pusey seems to maintain that these prohibitions form part of the natural law.—His argument requires it. He says it equivalently all through.—The catalogue of the precepts as given in the Vulgate.—Dr. Pusey's arguments, partly *intrinsic*, partly *extrinsic*.—The *intrinsic* arguments of three kinds; from the text itself; from the context; from other parallel passages (pp. 92-95).

I. Arguments founded on Leviticus xviii. 6-18, or the text.

i. The *general* precept in the sixth verse examined.—Dr. Pusey considers it a general enunciation of a principle, forming part of the natural law.—The reason for this assertion.—It is a law of a like measure in structure to those of the Decalogue.—Application of this assumed canon to another Levitical precept, plainly ceremonial; *reductio ad absurdum*.—Equal breadth, and less ambiguity in the ceremonial precept, than in the prohibition of v. 6.—The latter ambiguous, a. by reason of the subsequent list—b. in the expression, '*near of kin*.'—There is some reason for supposing it to apply to cases of consanguinity only.—A marked distinction between the two laws, but not on the point to which the Doctor's canon applies.—That canon must be rejected.—True view of the prohibition in v. 6. (pp. 95-98).

ii. Examination of the *subsequent catalogue*.—Further illustrations of Dr. Pusey's style.—Dr. Pusey's question, '*Who is of kin?*' must find its answer in the subsequent prohibitions.—But these are confessedly incomplete.—Dr. Pusey's attempted solution of the difficulty.—It is very obscure.—He is clearer

in his Evidence before the Commission.—Extract.—Examination of this his second explanation.—Objections to it.—1. It is not quite certain that marriage with a daughter is omitted out of the catalogue.—2. The marriage between uncle and niece was permitted to the Jews.—This is proved, a. from Scripture, before and after the giving of the Law.—b. from Jewish practice since.—c. from authority of Catholic Theologians.—Reasons for Divine permission of such marriage.—3. *It was permitted to the Jews to marry a deceased wife's sister.*—Dr. Pusey contends that this marriage was forbidden.—Analysis of the precept in the 18th verse on this subject.—The Doctor's way of meeting the difficulty.—*He admits that this prohibition is a judicial precept, 'done away in Christ.'*—Immediately after he gives an explanation of it, in manifest contradiction to this admission.—Application of his own caution to this phase of his contention.—He declines to be bound by his second explanation.—He returns to the sixth verse, as the basis of his argument.—Summary of his case, as it stands so far.—Its examination.—Answer to the Doctor's first conclusion.—A dilemma.—Answer to his second conclusion.—We have just title to argue from a particular prohibition to a general permission.—Illustrated by an example.—Proved by Dr. Pusey's own admission.—The self-contradiction involved in the opposito theory.—Argument confirmed by the Jewish practice.—Fresh difficulty in the way of the Doctor's contention; another of the prohibitions in Leviticus xviii. proved to be a judicial precept.—This prohibited marriage enjoined by Divine command under certain circumstances.—Analysis of this last precept.—a. The law refers to a brother, properly so called.—Proved from examples in the Bible.—b. It was a law of strict obligation; not as the Doctor calls it, a *permission* only.—c. The sanction of the law was severe.—d. The penal removal of the shoe by another, distinct from the voluntary removal of it by the man himself, on the occasion of a cession of property.—e. The provisions of the precept, extended afterwards to *all of kin*; but was not of obligation.—f. The object of the precept, partly political, partly ceremonial.—g. Probably it obliged the brother-in-law, even though already married.—Conclusion of the argument.—The Doctor's objections to it.—1. Intrinsic difference between the precept and exception; and difference of place in the Levitical code.—Answer; a. The injunction, more absolute than the prohibition.—b. The difference of position or collocation is an imagination of the Doctor.—Proof of this.—2nd objection. The injunction is not compulsory.—This statement refuted.—The objection confirmed from Scripture.—The confirmation refuted.—Conclusion of the second difficulty.—Fresh difficulty suggested by the Doctor's statements.—The question returns, *Who is of kin?*—Dr. Pusey's answer.—He invokes the authority of the English Establishment; and gives two canons for our direction.—The canons of no service.—The teaching of the Anglican Prayer-book examined, in its table of prohibited degrees.—The marriage of first cousins permitted; why?—Dr. Pusey's dilemma (pp. 98-126).

The Doctor's next argument derived from the structure of the prohibitions.—A self-contradiction in the statement of it.—Examination of the inference.—This identical structure includes a precept by universal consent merely judicial.—Ceremonial, judicial, moral precepts mixed up together, *as a rule*, in the Pentateuch (pp. 126-128).

Dr. Pusey assails the main principle, that the natural law is every way immutable.—Refutation of the attack.—His assertion of the mutability of the eternal Law.—Protest against such mischievous doctrine.—Animadversion on the absurd idea that God permitted what was grievous sin '*in itself*,' in order

'to consecrate the unity of marriage.'—The analogy drawn by the Doctor between physical and moral laws, shocks the moral instinct.—No exigency, especially one self-imposed, could make it possible that God should suspend the eternal law; *à fortiori* allow its violation to become a settled custom.

Recapitulation of the argument drawn from the text itself (pp. 128-134).

II. Dr. Pusey's second argument, founded on the context.—His statement.—

i. His first proof, from the fact that the antecedent and subsequent context refer to sins among the surrounding nations, evidently against the natural Law.—ii. Second proof, from certain strong expressions, found in the subsequent context.

Consideration of his first proof.—a. It collapses by its own weight.—b. The absence of these allusions in the Decalogue, tells strongly against it.—c. It ignores the general construction of the Sinaitic code.—Summary of the reply (pp. 134-138).

The second proof introduces us to,

III. Dr. Pusey's third argument derived from parallel passages.—i. First proof from the strong expressions used.—Dr. Pusey's statement, with commentary.—A parenthetical note.—Four words especially signalized by the Doctor.—Explanation of the meaning of each of these Hebrew words.—Summary of the evidence, and refutation of the argument.—The Doctor of great service in helping to invalidate his own proof.—His statement with commentary.

ii. Second proof, from an amplification of the Levitical precepts in the Prophet Amos.—Answer.—Conclusion of the Scriptural discussion (pp. 138-146).

CHAPTER II.

IS IT TRUE, THAT

"IN THE DELIBERATE JUDGMENT OF THE CHURCH FOR FIFTEEN HUNDRED YEARS, LEVITICUS XVIII. WAS SUPPOSED TO BE PART OF THE MORAL LAW, AND UNCHANGEABLE"?

Introductory remarks on Patrology.—It is a fruitful source of sophisms, if it is not studied under guidance.—All documentary learning, liable to the same difficulty.—It is in the nature of Patrology to lend itself to such treatment, as scientific Theology was then in its infancy.—The Theological value of Patristic, in its *collective* teaching, rather than in individual opinions. The necessity of a living guide in its study, illustrated by examples.—The dangers of private judgment, if it is our sole guide in such study (pp. 147-150).

Resumption of the argument.—Dr. Pusey's scriptural argument, an utter failure.—The old question unsolved, *Who is of kin?*—He is pressed on this point by the Commissioners; and his replies are suicidal.—He is obliged to abandon the Scripture evidence, and seek for a reply to the question from *the Church*, as he understands the word.—This admission *ipso facto* solves that first 'Papal contradiction' of his.—Another passage from his 'Evidence' inconsistent with the admission just made.—He seems to maintain that the special prohibitions in Leviticus are not subject to the Church's legislation, but only degrees not mentioned there.—These two contentions, incompatible.—Statement of the Doctor's theory, so far as it is possible to conjecture it.—He maintains that the general principle of v. 6. and the special prohibitions, *implicitly* as well as *explicitly* contained there, form part of the natural law, and

are immutable.—The Catholic Church had taught this for fifteen hundred years.—The Council of Trent, and the Catholic Church since that Council, have fallen into error on the point.—*Our contention is that the Church never once even taught any such thing* (pp. 150–157).

Preliminary consideration.—Examination of Dr. Pusey's evidence.

Dr. Pusey's witnesses.—i. THE APOSTOLIC CANONS.—The argument based on the nineteenth canon.—Answered by a *reductio ad absurdum*, from a review of other canons in the same catalogue.—The Doctor's further evidence.—His intention in producing it obscure, but determined by the context, and nature of the examination.—List of Councils, to prove this point.—Examination of the evidence.—Certain evidence, omitted by Dr. Pusey, added by ourselves.—ii. THE COUNCIL OF ELIBERIS, in Spain.—Its canon proves nothing in favour of the Doctor's theory,—but tells against it.—Dr. Pusey constructs an argument on the severity of the penance imposed *for marriage with a deceased wife's sister*.—This argument examined, and refuted by reference to other canons of the same Council.—The argument, if anything, tells the other way.—Tested by the Church's actual discipline.—The evidence of this witness fails.—iii. THE COUNCIL OF NEO-CÆSAREA.—It proves nothing in favour of the Doctor's assertions.—iv. THE COUNCIL OF VALENCE.—Remarks on the canon cited.—The evidence retorted.—v. ROMAN CODEX OF CANONS FOR FRANCE.—Its evidence clearly adverse to his assertions.—vi. COMMONITORIUM OF THEOPHILUS, Patriarch of Alexandria.—It is a decision concerning the marriage of a deacon with his niece before his ordination.—Proves these prohibitions to be only Ecclesiastical.—vii. IRISH COUNCIL, UNDER S. PATRICK.—Goes against the Doctor's contention.—viii. THE FIRST COUNCIL OF ORLEANS.—Proves nothing.—ix. THE COUNCIL OF YENNE, OR EPAONE.—Proves nothing.—x. THE SECOND COUNCIL OF TOLEDO.—It quotes the *general* prohibition in Leviticus, but not for its Sinaitic sanction.—xi. THE SECOND COUNCIL OF ORLEANS.—Concerned with a special case.—Proves nothing.—xii. COUNCIL OF CLERMONT.—At first sight seems to be in favour of Dr. Pusey's contention.—Yet formidable difficulties in the way of such an interpretation.—The meaning of the Council illustrated by contemporaneous history.—The true meaning of the canon does not help the Doctor's thesis.—xiii. THE THIRD COUNCIL OF ORLEANS.—Allusion to the old Law, but not to Leviticus xviii.—The canon bears evidence against the thesis.—xiv. THE FOURTH COUNCIL OF ORLEANS.—Proves nothing.—xv. COUNCIL OF PARIS.—Its canon does not tell in favour of the Doctor's assertions.—xvi. THE CAPITULA OF S. MARTIN.—Proves nothing.—xvii. COUNCIL OF TOURS.—The particular prohibitions of Leviticus quoted in this canon.—But not as laws binding on the faithful by virtue of their Sinaitic promulgation.—To be read indifferently with extracts from the Theodosian code and Canon Law, for the instruction of the people.—Proves nothing in favour of the Doctor's propositions.—xviii. THE COUNCIL OF AUXERRE.—Proves nothing.—xix. THE THIRD COUNCIL OF LYONS.—Proves nothing.—xx. THE COUNCIL OF MASCON.—Proves nothing.—xxi. S. GREGORY THE GREAT'S CAPITULA.—[A digression concerning a new theory of Ecclesiastical History.—Certain memorable pieces of 'Evidence' before the Commissioners.—Five notes thereupon.]—The capitula of S. Gregory prove nothing.—xxii. THE FIFTH COUNCIL OF PARIS.—Proves nothing.—xxiii. THE COUNCIL OF RHIMS.—Its only service in affording another instance of the use of the epithet, *Divine*, with relation to Canon Law.—xxiv. EXCERPTA OF V. BEDE.—Tell against the Doctor's assertions.—xxv. THE COUNCIL OF LESTINES.—Proves nothing.—xxvi. A ROMAN COUNCIL UNDER POPE ZACHARIAS.—Tells

against Dr. Pusey's argument.—xxvii. COUNCIL OF METZ.—Its canon does not seem to refer to marriage.—Anyhow tells against the Doctor.—xxviii. THE COUNCIL OF COMPIÈGNE.—Proves nothing (pp. 157-196).

xxix. *The Council in Trullo.*—Dr. Pusey represents it as a received Council of the Church.—It was a factious *conciliabulum*, according to the testimony of the V. Bede.—Its history.—Its canon, which has been called up to give evidence.—Prohibits marriages forbidden by no law, either Divine or human.—It quotes the general principle in Leviticus, but not the special prohibitions. For these it refers to S. Basil.—Proves nothing (pp. 196-200).

Summary of the Evidence.—The propositions were, that the Church for fifteen hundred years had taught that Leviticus xviii. formed part of the natural Law; and that the particular degrees, explicitly or by implication contained in that chapter, formed part of that law, and were unchangeable.—Dr. Pusey's stages of Church History.—The four assertions that had to be proved in connection with these stages.—Nothing of the sort proved as regards the first stage, up to the sixth century.—Nothing of the sort proved, as regards the second stage, from the beginning of the sixth, to the end of the eleventh century.—Dr. Pusey's stages off the road.—Review of his censure on the Rev. Mr. Jenkins (pp. 200-207).

The main points of Dr. Pusey's argument, to wit, *severity of punishment*, and *severity of expression*, and *appeals to Scripture*.—The whole confuted by an *argumentum ad hominem*.—His canons of criticism applied severally to the primitive law of *clerical celibacy*.—Protestants ill-informed on this matter.—A mistake of Miss Strickland concerning it.—A supposed Royal Commission on the subject under Edward VII. in A.D. 1898.—Evidence of the future Professor of Ecclesiastical History and Canon Law in the Catholic Seminary, Westminster.—His witnesses, i. THE APOSTOLIC CANONS.—ii. THE COUNCIL OF ELIBERIS.—iii. COUNCIL OF ANCYRA.—iv. Letter of POPE SIRICIUS, regulating the Church in Spain.—v. A COUNCIL OF CARTHAGE.—vi. COUNCIL OF TURIN.—vii. FIRST COUNCIL OF TOLEDO.—viii. CODEX OF AFRICAN CANONS.—ix. DECRETAL OF POPE INNOCENT I.—x. COUNCIL OF AGATHA.—xi. ROMAN CODEX OF CANONS FOR GAUL.—xii. DECRETAL OF S. LEO THE GREAT to the Church of Thessalonica.—xiii. FIRST COUNCIL OF ORANGE.—xiv. ECUMENICAL COUNCIL (THE FOURTH) OF CHALCEDON.—xv. SECOND COUNCIL OF ARLES.—xvi. FIRST COUNCIL OF TOURS.—All these included within Dr. Pusey's first stage of Church History.—xvii. COUNCIL OF GRENADA.—xviii. COUNCIL OF CLERMONT.—xix. DECRETA OF S. GREGORY THE GREAT.—xx. THE EIGHTH COUNCIL OF TOLEDO (pp. 207-218).

Discipline of the Anglo-Saxon Church in this matter.—Dr. Lingard's summary of evidence on the subject.—Severe statute of Edmund against clerics who violated their vow of chastity.—Prominently included in S. Dunstan's reform (pp. 218-220).

The Professor's conclusions.—By parity of reasoning clerical celibacy forms part of the natural and Divine Law; i. from the frequent appeals made to Holy Scripture in the canons.—ii. From the unusually strong language used by the Councils concerning the sin of those who violated it.—(A note is inserted here, for which the Professor is by no means responsible.)—iii. From the extreme severity of the penances imposed.—Expression of the Professor's private, but of just title, weighty opinion.—The deliberations of the future cabinet Council on the report (pp. 220-224).

CHAPTER III.

IS THIS JUDGMENT OF THE CHURCH, "THAT LEVITICUS XVIII. IS PART OF THE MORAL LAW AND UNCHANGEABLE," TO BE DISCOVERED IN THOSE FATHERS WHOM DR. PUSEY HAS QUOTED ?

Introductory.—Development of doctrine in the Church of Christ.—One of the instruments Divinely appointed for this development, conflict of opinion in the Christian Schools.—Hence individual Fathers and Doctors have written loosely, and sometimes even erred on points of doctrine, whose definition was reserved for a later age.—Instances of loose expression: Ante-Nicene statements concerning the B. Trinity.—S. Chrysostom, on original sin.—S. Augustine, on predestination, and grace, and the liberty of the human will.—Instances of errors in doctrine.—The rebaptizing of heretics; S. Clement of Alexandria, S. Cyprian.—Traducianism; Origen, Tertullian, S. Gregory of Nyssa, S. Augustine.—The dogma of the Immaculate Conception.—Therefore, on certain questions of dogma which were developed later, Fathers or Doctors of the School who preceded the definition, not the safest guides.—In using the writings of Fathers and Schoolmen as guides, great need of discriminating the nature of the document, whether it is a treatise, homily, or letter; and among letters, whether the one quoted was private, or intended for public perusal (pp. 225–234).

Dr. Pusey's first great witness, S. BASIL.—The document of his produced in evidence is a private letter.—It is brought forward to prove that Levit. xviii. forms part of the natural law in S. Basil's judgment.—A doubt as to the Doctor's meaning.—A possible explanation.—In either case alike the assertion impugned.—Basil appeals to Ecclesiastical custom.—He does not assume the Levitical prohibitions as his rule. The Doctor tries to meet this difficulty, but leaves it where he found it.—Refutation of the Doctor's comments.—The real meaning of Basil paraphrased.—The Doctor contends that Basil referred to a universal, not a local custom.—The point of little importance to the Catholic argument.—The question discussed.—Who was it to whom Basil wrote?—Dr. Pusey's statements on this head examined.—Balsamon says that it was that Diodorus, famous for his conduct of the Antiochene Patriarchate in the absence of Meletius, and then Bishop of Tarsus.—The Doctor makes light of Balsamon's authority, but unjustly.—Balsamon's statement confirmed by the intrinsic evidence of the letter.—The Doctor's reasons for Basil's custom not being a local custom, examined.—He is illogical.—Summary of his argument.—Refuted by reference to the Quarto-deciman controversy.—Another instance in confutation of the Doctor's view, viz. the Apostolic Canon enjoining abstinence from things strangled and from blood.—Summary of refutation.—Difference made between those who were Catholics and those who were not, at time of marriage.—That a prohibition constituted an *impedimentum dirimens* to marriage, no proof that it was either Apostolic or universal.—Curious instance of the Church's benignity towards converts.—Another argument of the Doctor from Basil's use of the word, *θεσμός*.—Rejected.—Another argument of his from Basil's use of the word *ἔθος*.—Rejected.—Another, from Basil's use of the verb *παράδοθῆναι*.—Rejected.—The Doctor's philological conclusion.—Examined, and rejected.—The Doctor's digressiveness.—He

adopts a condemned heresy as his own, in order to make Basil quote as he thinks the Saint must, and ought to have quoted.—The Doctor's statement—Examined.—His heretical statement condemned by the Council of Trent.—And by S. Basil.—And by S. Chrysostom.—The Catholic faith on this point.—Tradition, its nature, and various species.—i. Either dogmatic or disciplinary.—ii. Disciplinary traditions either a. perpetual or temporary; b. Apostolic or Ecclesiastical; c. of precept or of counsel; d. universal or local.—All received Ecclesiastical customs properly so called obligatory, till abrogated.—Application to the Doctor's statements.—His absurd conclusion.—Another argument of his to prove that Basil's custom was not merely local, much more solid.—As the Doctor puts it, very strong.—A contrary hypothesis, in explanation of Basil's letter.—Considerable internal evidence that this hypothesis gives the true version of the story.—The Doctor's fresh argument from the vehemence of Basil's style.—It was a private letter, written under considerable irritation.—Summary. Nothing to prove clearly that the custom was not purely local.—Considerable evidence to convince us that it was.—The point of no importance to the main question.—Basil's letter proves nothing in favour of the Doctor's assertions (pp. 224-266).

Dr. Pusey's second witness; S. AUSTIN.—Four passages brought forward altogether; one dismissed, a second postponed.—Consideration of the third passage.—The quotation, as given by the Doctor.—The author's translation.—No reason for saying that it gives Augustine's maturest judgment, but rather the reverse.—Certain notes on the passage.—i. The subject-matter, not the matrimonial prohibitions.—ii. Yet the temporary precept in question joined on to them.—iii. Augustine's difficulty, (for the work of his quoted consists of a collection of Scriptural difficulties) is about the repetition of the said precept.—iv. He says it was repeated in Levit. xviii. to show that it was not abrogated with other parts of the law.—v. Augustine seems to class it and its companions among dictates of the natural law.—vi. Reason he suggests for this idea.—vii. The same reason applied to the matrimonial precepts.—viii. It is to be remarked that Augustine's argument *primarily* includes the half-judicial, half-ceremonial precept, which all now admit to have been merely temporary.—ix. The Saint was mistaken.—x. Repetition of precepts, common in the Pentateuch.—Augustine's confirmation from Ezechiel contains three mistakes.—a. one of fact.—b. one of principle.—c. another of fact.—xi. The Saint's solution tentative.—xii. He states that the surrounding precepts are perpetual; but which? and in what sense?—Summary of the answer.—Another passage of S. Austin from his *Speculum*, or Bible lessons for the laity.—Dr. Pusey's statement.—Refuted.—The company in which the Levitical precepts find themselves in this collection (pp. 266-274).

Dr. Pusey's third witness; S. AMBROSE.—Translation of his letter to Count Paternus.—The Doctor's comment on it.—His different treatment of this letter in different parts of his work.—Certain notes.—i. It is a private letter, with great mistakes in substance and in composition.—ii. Possible explanation of one mistake.—iii. Ambrose's six reasons against this contemplated marriage with a niece.—iv. There is talk of a *dispensation* in the letter.—v. Examination of Ambrose's third reason against the marriage.—The difficulty; Ambrose says that the marriage is prohibited by the Divine Law.—The difficulty solved; First, the Levitical precepts *historically* Divine.—Secondly, these prohibitions had been imposed by the Church.—Thirdly, he appeals to them for this reason, just as he appeals to the Imperial law.—Fourthly, he did not consider

them of Divine obligation under the Gospel.—Fifthly, he never says that such prohibitions form part of the natural law, but clearly implies the reverse (pp. 274–286).

Dr. Pusey's fourth witness; S. GREGORY THE GREAT.—The Doctor's statement touching his evidence.—Occasion of the Decretorial letter.—Text of the letter.—A help to the understanding of it in another letter of Gregory on the subject.—The Doctor rejects it as spurious.—Reasons for considering it genuine.—The Church, long before Gregory's time, had extended prohibitions to the seventh degree.—Extract from Gregory's letter.—There is no doubt that the prohibitions were extended, at all events, to the fourth.—Far beyond the Levitical code.—Gregory grants a *dispensation*, properly so called.—The Church's teaching concerning the Sacrament of marriage.—*Impedimenta impedientia*.—*impedimenta dirimentia*.—In marriages contracted, spite of an *impedimentum impediens*, separation not necessary; in a case of *impedimentum dirimens* it is.—The early Canons made an *impedimentum dirimens* much past the Levitical prohibitions.—The parallel case of S. Boniface under S. Gregory II.—S. Gregory II.'s Decretal.—Another instance of Ecclesiastical Canons being called Divine.—The Doctor's argument drawn from the exception, not the rule.—Why did S. Gregory the Great arrest his dispensation at the second degree?—The Doctor says, because of Leviticus xviii.—But first cousins are not dispensed.—Then, why did S. Gregory II. arrest his dispensation at the fourth?—Why does Gregory the Great *anathematize* those who marry a god-mother?—Other difficulties from the Canons of Councils.—The author's reason why Gregory stopped at the second degree, because the relationship was so close.—Gregory does not say a word in favour of the Doctor's assertions.—Remarks on the Doctor's stages in Church history.—His division accepted, with a little alteration in the wording (pp. 286–302).

Dr. Pusey's fifth witness, THEODORE, ARCHBISHOP OF CANTERBURY.—The Doctor's biography of him.—At once deficient, and erroneous.—History of Theodore's antecedents.—His knowledge of the Canon law of the Western Church, not likely to be extensive.—The Doctor's statement about his evidence.—Two notes.—i. There is an interpolation of the Doctor's.—ii. An error in the reading.—The Greeks clung to the old rule of prohibition to the second degree inclusively.—According to Theodore, marriages forbidden in the Roman Church only to the fourth degree inclusively.—Reasons for thinking him wrong.—He does not suggest a word in justification of the Doctor's assertions (pp. 302–307).

Dr. Pusey's sixth witness: S. ZACHARIAS, POPE.—An account of him.—The Doctor's statement of his evidence.—The last sentence, on which the Doctor's whole argument rests, though in the *Decretum*, is not in the Pope's original letter.—The Pope's letter entire.—The sentence italicized by the Doctor, a mere explanation of a Hebraism.—The case, on which Zacharias pronounces, is one of *spiritual affinity*; a fact which puts the Doctor between the horns of a dilemma.—Yet this marriage is declared null.—Comparison with another decree of S. Zacharias.—Strong denouncement of marriages between persons connected by spiritual affinity.—Pope S. Zacharias says nothing whatever to favour the Doctor's assertions (pp. 307–312).

Dr. Pusey's last witness, POPE INNOCENT III.—His times.—His history.—The Doctor's statement of his evidence.—Another similar statement in the *Eirenicon*.—Certain *prolegomena*.—i. The weight to be attached to a Papal decretal.—a. The *formal* judgment, in the author's opinion, infallible, if it

directly regards a principle of morals.—b. Solution of a particular case of discipline, not infallible.—c. The prefatory, subsidiary, or incidental parts of a decretal not infallible.—d. Much less, the particular wording.—ii. This last proposition is confirmed by the omissions and changes in Papal letters, made by the compilers of the Corpus.—iii. It is useful to consult the original document, if possible.—iv. Most necessary, to be acquainted with the circumstances of the particular case.—Varied meaning of the same phrase under different circumstances, illustrated.—v. The Glosses, as such, have no Ecclesiastical authority.—Many of them condemned by Gregory XIII.—There is no such thing as what the Doctor calls an ‘*authorized gloss*.’—vi. The *Decretum* of Gratian has no Ecclesiastical authority of itself.—The importance attached by the Doctor to these decretals of Innocent (pp. 312–320).

I. The first Decretal, c. 13. *Literas tuas, de restit. spoliat.*—Little or no correlative evidence about it.—The story, as gathered from the Decretal.—The translation of the Decretal in full.—It is a practical solution, not a dogmatic definition.—The cause not *directly* connected with the question of prohibited degrees.—It was a case of rehabilitation.—The incidental phrases, relied on by the Doctor, of two kinds.—For one, the Archdeacon of Bourges alone responsible.—The other consists of Innocent’s own words.—The words of Innocent quoted, merely the judgment of a private Doctor, even if they meant all the Doctor wishes.—What do the words really mean?—i. What does *Divine law* mean?—Different uses of the phrase.—ii. What do the words, *cannot*, and *may* mean?—Different senses possible.—The Doctor goes off to the Glosses; but they have no authority; and then they tell both ways.—How are we to determine the true meaning?—The Doctor’s method.—Method of a Catholic Theologian.—The author’s interpretation of the Decretal (pp. 320–330).

II. The second Decretal; *cap. Gaudemus, de Divortii.*—Translation of the Decretal.—Certain notes.—i. Remark on diversity of reading.—ii. Innocent allows the validity of marriages contracted by Pagans in the *second* degree.—iii. Discussion of the Doctor’s inference from this Decretal.—Innocent’s words thoroughly harmonize with the Catholic teaching.—The Decretal bears witness against the Doctor’s assertions (pp. 330–333).

III. The third Decretal, *cap. de Infidelibus, de consang. et aff.*—Circumstances under which it was written.—Translation of the Decretal.—Notes; i. Dr. Pusey has changed a most important word.—ii. The Decretal is mainly concerned with marriages of Jews before conversion.—iii. The marriages of other infidels included.—iv. No question of the natural law.—v. One difficulty, —a great one,—as to the condition inserted by Innocent.—Explanation.—vi. Tyre certain to be full of Jews.—vii. The Doctor’s whole argument based on a false reading (pp. 333–335).

IV. An additional Decretal quoted in the *Evidence*, *cap. Deus qui, de Divort.*; —Geography of Livonia, and history of Riga, its metropolis.—Circumstances of the Decretal.—Extract from it.—The difficulty.—The Doctor’s argument; a greater difficulty; it involves self-contradiction.—Possible explanation given by Gonzalez.—Not entirely satisfactory.—This Decretal does not give the minutest support to the Doctor’s assertions (pp. 335–339).

These Decretals, taken separately, fail as witnesses; how about their *collective* evidence?—An important statement of the Doctor with regard to these Decretals contradicted by the facts.—If the inference from expressions does not hold good; may not the sense conveyed prove the Doctor’s theory?—No.—At all events, as regards the first Decretal?—No.—But the Doctor takes

'the known use of the term,' Divine law.—There are many known uses; no 'the known use.'—Theological statement on the strict meaning of the phrase, and on its recognized derivative meanings.—With special reference to the Sinaitic code, and its three classes of precepts.—The natural law, *of itself*, may be called *Jus Divinum*, but not *Lex Divina*.—Ecclesiastical canons frequently called Divine law in a secondary sense (pp. 339–344).

Full examination of the reasons why the Fathers commonly quote Leviticus in the matter of these matrimonial prohibitions.—Their constant study of, and spiritual abode in the Bible.—Three ways in which the Fathers quoted from the old Law: i. as proofs.—ii. as confirmatory of principles.—iii. as illustrations and types.—Therefore, when a Father quotes from the old Law, he does not thereby declare it to be binding on us still.—The Fathers, produced by the Doctor as witnesses, quote Leviticus xviii. in the second way.—Yet may justly use the phrases, '*It is forbidden*,' or '*we are forbidden*.'—Reasons for the assertion that the Fathers quoted Leviticus xviii. in this way.—i. They apply Leviticus to degrees not prohibited there.—ii. They apply it to a species of affinity entirely beyond the scope of the old Law.—iii. They quote its general principle, rather than its particular prohibitions.—The habit of quoting from Leviticus does not show that the Fathers held the Doctor's view.—Dr. Binterin's judgment on this question (pp. 344–351).

Summary of the evidence given by Dr. Pusey's chosen witnesses.—Their appearance as conscripts in the Protestant ranks (pp. 351, 352).

CHAPTER IV.

WHAT SAY THE DOCTORS OF THE SCHOOL?

A change of method in this chapter.—Reasons given for the change.—An additional reason, the slovenly character of Dr. Pusey's evidence, and his want of acquaintance with Scholastic Theology, and Canon law (pp. 353–355).

A coup d'œil of Ecclesiastical history immediately previous to, and contemporaneous with the Pontificate of Innocent III.—The revival in Christian Europe of the Peripatetic philosophy.—Opportuneness of this revival.—The birth of the School.—The scientific development of Canon law.—The construction of Theological science.—Scholastic questions, as battled out in the Schools, a preparation for future definitions.—The difference of the Church's attitude towards open questions, and towards defined dogmas.—The natural upspringing of the question concerning the prohibited degrees.—The Theology of the subject not yet elaborated.—Ecclesiastical causes of great notoriety brought it prominently forward.—Innocent simplifies the Canon law on the point of the prohibited degrees.—Legislation of the fourth Lateran Council (A. D. 1215) on the matter.—The fiftieth *capitulum*.—The great, open questions involved in the impediments of consanguinity and affinity, unaffected by the new law.—The Doctors of the School take the subject up (pp. 355–367).

A medley of truncated quotations not a fit means for acquiring, or conveying knowledge of Scholastic teaching.—The present plan, to take a representative Doctor, carefully exhibit his doctrine on the subject of our inquiry, and group the others round him (p. 367).

S. THOMAS OF AQUINO, chosen for this purpose.—He does not belong to the '*unsatisfactory school*.'—I. His teaching concerning the natural law recapitu-

lated under six heads.—II. What he has to say as to the Divine Law.—Four reasons why a revealed Law was necessary, over and above the natural law and human enactments.—The relations of the Divine Law to the natural, considered under two heads.—Division of the Divine Law into the Mosaic or Sinaitic, and that of the Gospel.—III. Summary of the Angelic Doctor's statement concerning the old, or Sinaitic Law.—The reduction of the other moral precepts to the commandments of the Decalogue.—S. Thomas reckons the Levitical prohibitions among the judicial precepts, not among the moral.—IV. His doctrine concerning the New Law of Christ, summarized under seven heads.—V. His teaching as regards the impediment of consanguinity.—i. Definition of consanguinity.—ii. How far, and for what reasons the natural law forbids marriage between blood relations.—His explanation of the cause why nature forbids marriage between parents and children.—Marriage with a mother more unnatural than with a daughter.—S. Thomas teaches that marriage with a niece was not prohibited under the old Law, and suggests a reason why.—The passage unintelligible, as it stands.—iii. The Church's authority to extend these prohibitions.—The Church's canons have the same force of obligation as the Divine Law.—VI. What the Angelic Doctor has to say about the power of dispensation.—The Pope can dispense in all but three things; a. the natural law; b. matters of faith; c. the Sacraments.—S. Thomas explains in what sense dispensation can be granted as to the commandments of the second Table.—Summary of his doctrine on the whole question.—The one difficult passage which seems to be in contradiction with his general teaching.—Solution of the difficulty (pp. 367-395).

(Two notes illustrative of Dr. Pusey's peculiar method of misquotation, pp. 393, 394.)

THE BLESSED ALBERT THE GREAT, Professor of S. Thomas.—Two passages from his Commentary on the Sentences of Peter the Lombard, which have been quoted against Catholic teaching in the '*Evidence*,' examined.—The first passage.—The second, which treats of the *impedimentum publicæ honestatis*.—Errors in the statements, contained in the '*Evidence*,' concerning these passages (pp. 395-398).

S. BONAVENTURE, the Seraphic Doctor.—Short biography of this Franciscan luminary.—His doctrine on the impediment of consanguinity (pp. 398-400).

WILLIAM OF AUXERRE.—His teaching with regard to the same question (pp. 400-402).

(Note on some further instances of Dr. Pusey's errors in quotation, p. 402.)

Review of Scholastic teaching up to the close of the thirteenth century.—Points of agreement.—i. Threefold division of matrimonial prohibitions.—ii. Only one degree of consanguinity in which marriage is prohibited by the natural law, viz. that between parents and children.—iii. The principal intrinsic reason of this prohibition, the incompatibility of the two affections.—iv. S. Thomas says that marriage with a daughter is a less offence against the natural law than marriage with a mother.—v. But, generally speaking, these Doctors, with the exception of S. Thomas, give a prominence and special authority to the Levitical prohibitions, which is excessive.—Explanation of the fact.—This was *never* universal; there always existed an opposite school.

JOHN DUNS (*Scotus*) was one of these.—Prejudice excited by Dr. Pusey against his authority, and that of the Scotist school generally.—It is most probable that he has not studied any one of them.—Censure of this unwarrantable attack.—The tables turned.—Short account of Duns *Scotus*, the Doctor

subtilis.—The complaint against 'the barbarous terminology' of the School, retorted by Rohrbacher on its authors, our modern *illuminati*.—Extracts from Scotus.—Summary of his teaching on the prohibited degrees.—Note illustrative of Dr. Pusey's method in citing (pp. 402-409).

The fourteenth century. Two representatives of the two opposite schools.

i. PETER AURIOL (*Verberius*). Short account of his life.—Extract from his writings.—DURAND OF S. PORÇAIN to be classed along with Auriol.

ii. THOMAS OF STRASBOURG (*Argentina*).—Extract from his Commentary on the Sentences.—JOHN OF BACONTHORPE (*Doctor resolutus*).—His history.—Extract from his writings.—Summary of teaching in the fourteenth century.—Agreement with, and divergence from the earlier Doctors, and between themselves.—The doctrine of John of Baconthorpe analyzed.—Certain peculiarities in the teaching of the fourteenth century, marking a new stage of development.—1. The old prejudice about the Levitical prohibitions, gradually dying away.—2. Corresponding change in mode of expression.—3. The question of infidel marriages becomes a prominent subject of discussion.—4. The growing importance of Canon law in Theology (pp. 409-417).

S. ANTONINUS brackets in his life the fourteenth and fifteenth centuries.—He is dismissed.

The fifteenth century, and on to the Council of Trent.—Three representatives (pp. 417-421).

i. THE BLESSED ANGELO DI CLIVASIO.—Account of his life—Quotations from his *Summa*.—Summary of his teaching.

ii. CARDINAL JOHN TORQUEMADA.—His biography.—Synopsis of his teaching with regard to the prohibited degrees, and Papal power of jurisdiction in their regard.—Substance of his evidence.—1. The co-existence of two opposite schools with respect to this subject.—2. Their respective stand-points.—3. The distinction made by what may be called the Mosaic school between the Levitical prohibitions in their relation to the natural law.—4. Their teaching admitted by him to be a mere opinion.—5. Both schools agree that the Levitical precepts only bind Christians, so far as they form part of the natural law.—6. Both agree that only marriage between parents and children is *strictly* prohibited by the natural law (pp. 421-427).

iii. PETER PAUL PARISIO.—His biography.—Extracts from the *Consilia*.—Analysis of Parisio's individual teaching, or opinions.—His testimony to the state of opinion in the Catholic schools of his day.—The continued existence of two schools.—Their unanimity on certain fundamental points.—His account of the 'Scotist' school, if so it is to be called.—i. Its continuance, and the illustrious catalogue of its Doctors.—ii. Its teaching as to the amplitude of the Papal power of dispensation.—iii. The argument of its Doctors that such amplitude of power is a necessary consequence of our Lord's kind providence for His Church.—iv. The one exception to this amplitude of Papal power.—v. Both schools agree that *practically* the Pope can dispense in the Levitical prohibitions.—vi. Both admit the complete annulling of the old Law (pp. 427-438).

Recapitulation (pp. 438, 439).

CHAPTER V.

DR. PUSEY'S ACCOUNT, STATISTICAL AND DOCTRINAL, OF PAPAL DISPENSATIONS WITHIN THE PROHIBITED DEGREES EXAMINED BY THE LIGHT OF HISTORY.

Remarks on dispensation.—Two kinds, one declarative, the other judicial.—The number of persons included in the dispensation cannot affect the real nature of the dispensation itself.—Preliminary cautions.—i. The Papal documents at present known, mere scraps of what once existed.—Three kinds of documents most likely to survive; a. those connected with kings and other noble persons; b. containing important legal decisions; c. connected with religious houses.—Many documents existing in libraries, &c., not yet published.—Illustration of this from three great works, partly of the seventeenth, partly of the eighteenth centuries.—Rainaldi's continuation of the *Annales* of Baronius, afterwards edited and revised by Mansi.—Baluze's *Miscellanea*, edited and augmented by Mansi.—Dom. Martène's *Thesaurus Anecdotorum*.—Sources whence the latter gained his collections of Papal letters.—The Papal documents published by these authors chiefly belong to the three classes mentioned above.—Illustrated by two examples.—ii. Affinity results from illicit as well as from conjugal intercourse.—Dr. Pusey's contrary assertion contradicted by every kind of evidence, intrinsic and extrinsic.—iii. The Roman Pontiff usually grants a dispensation more readily before marriage than after marriage already contracted with knowledge of the impediment.—iv. The Pope consults with eminent Theologians and Jurists, when the prayer of the petition is unusual (pp. 440-454).

Dr. Pusey's history of Papal dispensations, as given before her Majesty's Commissioners.—Notes on his meagre account.—i. He has had to correct his evidence in brackets and foot-notes, since he gave it.—ii. His account of William the Conqueror's relationship to his wife Matilda inaccurate.—iii. Thomassin mistaken in his fact, quoted by Dr. Pusey.—iv. Change of nomenclature.—Dr. Pusey's critique on the Evidence of Cardinal Wiseman, with sundry comments (pp. 454-460).

The author's answer to the two questions of the Commissioners.—Necessary delay in the Church's moral legislation during the early centuries.—In particular, as regards the prohibited degrees.—The Roman Emperors granted dispensations for the marriage of first cousins, as Cassiodorus bears witness.—Short account of Cassiodorus.—In the sixth century local legislation begins with regard to these marriages, but it was remedial of present abuses, and therefore partial.—The form of an Imperial dispensation as given by Cassiodorus.—Cardinal Wiseman was right.—The Church not altogether inactive.—A decree of Pope S. Siricius in the fourth century.—A letter of Ennodius, afterwards bishop of Pavia, which shows that already in the sixth century it was the custom to apply to the Pope in cases of marriage within the degrees of consanguinity.—It is probable that Diodorus of Tarsus granted what was equivalent to a dispensation.—Count Paternus distinctly asserted, as we know from S. Ambrose, that a dispensation had already been granted for marriage with a niece.—Dispensations not unknown in the primitive Church (pp. 460-467).

LIST OF RECORDED PAPAL DISPENSATIONS.—I. S. Gregory the Great grants one to the English.

II. S. Gregory II. grants a similar one to Germany.

III. S. Zachary.—A boasted dispensation in a complicated case of incest and sacrilege.—Strong *indirect* argument for the existence of a practice of granting dispensations, at that time, in prohibited degrees.—The Pope declares the document to be a fabrication.—His indirect testimony to the practice of dispensations.—Dr. Pusey's account of the same fact.—It involves a *suppressio veri*.—Summary of indirect evidence for the practice of granting dispensations in the eighth century, as gathered from the letters of SS. Zachary and Boniface.

IV. Alexander II. grants a dispensation to William the Conqueror.

V. General faculties of dispensation granted by Urban II. and Paschal II. to S. Anselm.

VI. Proofs from S. Bernard and Hugo of S. Victor, that the Pope was wont to dispense in the prohibited degrees during the twelfth century.—Summary of their evidence (pp. 467-479).

VII. Dispensations granted by Innocent III.—i. To the converts of Tiberias already married in the *second* and more remote degrees.—ii. To the Livonian converts a threefold dispensation given, a. to retain their deceased brothers' widows in marriage; b. to retain wives in second degree of consanguinity; c. to marry hereafter, as Catholics, in the fourth degree.—iii. to x. Eight individual dispensations.—xi. A dubious one in the first and second degree.—xii. Petitions refused in great number for marriage between uncle and niece.—xiii. Numerous similar petitions to Celestine III., the predecessor of Innocent, which were rejected.—Celestine III. dissolves a marriage, because dispensation had not been previously obtained.—Reason given why so many dispensations of Innocent III. are recorded, while so few are known of before his time (pp. 479-483).

VIII. Four dispensations granted by Innocent IV.—Dr. Pusey, inaccurate in his account of the first.—Inaccurate in his account of the second.—The two others are not mentioned by him.—These dispensations belong exclusively to one year of Innocent's Pontificate.—In one the affinity arises from illicit intercourse (pp. 483-487).

IX. Alexander IV. unexampled, says Moroni, for the facility with which he granted dispensations.—Only one dispensation of his still on record (pp. 487, 488).

X. Four dispensations granted by Clement IV.—i. An unusual one, granting a *general* dispensation to an individual for marriage in the fourth degree.—ii. In the third and fourth degree of consanguinity.—The text of this dispensation.—iii. A curious dispensation.—History explanatory of it.—The text of the dispensation.—iv. Dispensation refused.—The letter of refusal.—The Pope in the course of it remarks on the frequency of dispensations granted in past times (pp. 488-493).

XI. Two cases of dispensation in the time of John XXII.—i. History of the first dispensation asked for, and refused.—Reasons for refusal.—ii. A dispensation granted to first cousins (pp. 493-495).

XII. Two dispensations of Clement VI.—The second is declaratory.—(Note on Mansi's conjecture as to the Pontiff to whom the documents, which he has discovered, should be assigned.—Reasons for rejecting his opinion.)—Clement profuse in granting dispensations, as his biographer d'Harcourt states (pp. 495-498).

XIII. A dispensation granted by Innocent VI.

XIV. The celebrated dispensation of the B. Urban V. in the first degree of affinity.

XV. Two declaratory dispensations of Gregory XI., attributed by Mansi to Innocent VI.

XVI. Martin V. grants a dispensation for *marriage with a deceased wife's sister*.—Dr. Pusey's correction of Cardinal Wiseman, a great blunder.

XVII. A dispensation granted by Nicholas V.

XVIII. The history of a forged dispensation supposed to have been given by Pius II. permitting marriage with a sister.—Punishment of the guilty Pronotary, and of the incestuous pair.

XIX. Sixtus IV. granted very many dispensations, as Moroni tells us.—One notable instance on record, *permitting marriage with a niece*.

XX. Dispensations granted by Alexander VI.—Doubts suggested as to the truth of the charges made against his moral character.—Testimony of Voltaire, Roscoe, Hubner.—The truth or falsehood quite irrelevant to the issue.—The two famous dispensations as given by Dr. Pusey (pp. 498-504).

XXI. The dispensation granted by Julius II. to Henry VIII. authorizing his marriage with his deceased brother's wife.—History of the transaction.—Marriage and death of Arthur.—Precontract and canonical protest of Henry, Prince of Wales, at the instance of his father.—The text of the Papal Bull of dispensation.—Speedy marriage of Henry with Katharine after his father's death.—Anne Boleyn related to Henry by double affinity, in consequence of previous sin with her mother and sister.—Some have maintained she was his own daughter.—[Note on this subject.—Miss Strickland rejects it.—The circumstantial account as given by Sanders.—Difficulties in the way.—Energetically scouted by Dr. Lingard.—The Doctor is too apt to be impartially partial, especially in Catholic questions.—The Rev. Mr. Blunt seems to give credence to it.—As regards the irregular intercourse with the sister, Mary Boleyn, he quotes the authority of Sir Henry Ellis.]—Henry's efforts to get the opinions of Theologians and Jurists against the lawfulness of the Papal dispensation.—Chosen Doctors from Oxford and Cambridge decide against him.—He tries the English bishops and fails.—Henry tries what he can do with Clement VII., who was under obligations to him.—A conclave of Doctors at Rome against the divorce.

i. Judgment of the Universities.—Henry's efforts by bribery and intimidation to gain over the two English Universities.—Cardinal Pole's evidence as to the common judgment against the divorce, and the practices of Henry.—a. Proceedings at Cambridge.—Letter of Gardiner and Fox, the king's agents.—The Vice-Chancellor told the king he would never have obtained a decision, *if there had been any question of the Pope's power to dispense in the Divine Law*.—Saving clause in the Cambridge decision.—Cambridge royally manipulated, as the Rev. Mr. Blunt tells us.—b. The proceedings at Oxford.—A fictitious decision obtained by fraud.—Laughable incident in the sham convocation.—c. Efforts with the foreign universities.—Most prodigal bribery.—Witness of Cavendish.—Of Clement VII.—Francis I., King of France, trades on Henry's adulterous passion.—Uses his utmost influence for Henry.—The University of Paris.—The Bishop of Brazil, ocular witness to the bribery.—Paris stood firm; and a sham decision of a minority was obtained, as at Oxford.—The document itself a lame one.—Summary as regards the other French Universities.—Proceedings with the Universities in Italy.—The document from Bologna a

forgery.—The Padua decision bought for a hundred crowns.—History of the Ferrara decision.—Henry tried, but failed in Germany.—Peter of Leyden witness to the bribery at Cologne.—Confirmatory evidence of Cochläus, who was himself tempted with bribes.—Intrinsic impotence of the decisions obtained.—Summary of evidence, proving the development of opinion in the schools on the subject of the prohibited degrees and of the Papal power of dispensation in their regard (pp. 504-526).

ii. The action of the Pope.—Clement's indulgent sympathy.—Issues a brief, forbidding a new marriage.—Afterwards, writes a letter of expostulation to Henry with threat of excommunication.—The Rev. Mr. Blunt's calumny against the Popes, in contrast to the general tone of his interesting book.—Clement proceeds, on hearing of Henry's obstinate continuance in sin, to issue a brief forbidding his marriage with Anne Boleyn under pain of excommunication.—At last pronounces definitive sentence against the divorce.—Text of the Bull.—Paul III. excommunicates Henry (pp. 526-531).

NOTABLE POST-TRIDENTINE DISPENSATIONS RECORDED.

XXII. Gregory XIII. gave a dispensation for marriage with one who was both uncle and brother-in-law.

XXIII. Clement VIII. gave a dispensation for marriage *with a deceased wife's sister*.—Ferraris mentions several other similar dispensations.

XXIV. Paul V. granted two dispensations.

XXV. Urban VIII. granted seventeen; among them one to marry a *deceased wife's sister*, when there had been issue by the former marriage; another to marry a deceased husband's brother.

XXVI. Innocent X. grants three. Among them, one to marry a deceased husband's brother, another to marry a deceased wife's sister.

XXVII. Alexander VII. granted twenty-two.

XXVIII. Clement IX. granted two.

XXIX. Clement X. granted nine.

XXX. Innocent XI. granted three.

XXXI. Innocent XII. granted three.

XXXII. Clement XI. granted sixty-two, besides many others in the first and second degrees of affinity mixed.

XXXIII. Pius VI. grants faculties to Austrian bishops to dispense in the third and fourth, and even in nearer degrees, provided it was first approved of by the Holy See.

All these dispensations were either in the first degree of affinity, or in the first and second degrees of consanguinity or affinity mixed. The more ordinary ones not counted.

Summary.—Correspondence of practice with doctrinal development (pp. 531-535).

Tridentine definitions on the subject.—The two Canons of the Council of Trent touching the prohibited degrees.—Three points determined.—i. The Church can constitute *diriment* impediments.—List of those existing at present.—ii. The Church can make other than the Levitical degrees impediments to marriage.—iii. The Church can dispense in some of the Levitical degrees.—a. Explicit statement that She can dispense in *some*.—b. Implicitly stated that She cannot dispense in all.—Extent and limit of the Papal prerogative.—The dispensing power included in the gift of loosing.—Corollary.—Decree of reformation passed in the Council of Trent.—The decree itself.—Twofold meaning of the word, *gratis*, in this decree (pp. 535-546).

Dr. Pusey's account of the Council of Trent and of post-Tridentine doctrine and practice.—Choice collection of passages from his *Evidence*, &c.—Summary of Dr. Pusey's teaching with a summary exposure.—Defence of Julius II.—Testimony of Stella, Le Chevalier Artand de Montor, Ciaconius, Moroni, Rohrbacher, Ranke.—Negative testimony of Mosheim.—The different relation of a Divinely revealed truth to the mind of the faithful before and after its infallible definition.—Papal definition does not make a new truth, but proposes an old eternal truth, revealed from the beginning, as a new object of faith.—(Note on Traducianism.) — Dr. Pusey's qualifications for his self-chosen office as censor of the Catholic Church, Supreme Pontiffs, and Ecumenical Councils (pp. 546-564).

DOCTRINAL POSTIL.

CHAPTER I.

THE ROOT OF THE MATTER.

Introductory notions.—Unity, or order, common to the good, the perfect, and the beautiful.—Order in the material universe imposed by necessary laws.—In the world of spirit it is freely evolved by the will of the creature.—The fundamental principle of Ethics, *Follow the right order*.—The philosophical meaning of the word, *nature*.—The ordering of moral action includes three relations, viz. to oneself, to the family, to the State.—This last twofold, as regarding two bodies politic, the State and the Church.—The fundamental principle already mentioned, equally applicable to these three classes of duty.—Principal moral laws implicitly contained in it easily discoverable by reason.—The natural law is revealed to us by reason, not by mere feeling or instincts.—This law to be known by its universal recognition and acceptance.—The reasons for its dictates easily perceived.

It is of the highest certainty that the natural law does prohibit some marriages or other between relatives, but it is uncertain how far the prohibition extends.—The Church has not as yet spoken directly on the point.

Definition of marriage.—Necessity for knowing the end or purpose of marriage.—It has a threefold end; one political, one social, one specifically moral.

We naturally begin with the political end,—which has relation to two bodies politic, the State and the Church.—The duties to each, though not incompatible, are distinct, and must be considered separately (pp. 567-574).

I. The effect of incestuous marriages on our *duties to the State*.—i. Increase of population conduces to the well-being of the State.—ii. A healthy population necessary to the well-being of the State.—So also a sound-headed race.—Intimate connection between the two.—Incestuous marriages tend to diminish the population.—They also tend to produce physical degeneracy.—Interfere therefore with another political end of marriage.—iii. One end of civil government, union among subjects.—This union effected by multiplication of ties,—Particularly family ties, which are extended by marriage.—Incestuous marriages, an obstacle to this end (pp. 575-581).

II. The claims of the Church superior to those of the State, but not antagonistic.—On the contrary, a great help to the latter.—One object of the Church of Christ to fill the vacant thrones in heaven.—Christian marriage, a

powerful auxiliary.—Hereditary influences in relation to bodily and mental disposition.—Incestuous marriages an obstacle to the Church's work.—i. By affecting the number of births.—By physical degeneracy.—ii. Multiplication and extension of the ties of charity by Christian marriage.—The doctrine of S. Austin on this head.—(Note. Discussion of the question touching the time when marriage between first cousins began to be prohibited by the Church, probably in the Apostolic age) (pp. 581-590).

III. The effect of incestuous marriages on the *social* end of man.—Considered generally.—The family in its relation to education.—The family spirit, chief natural bulwark of the State.—The injury that would accrue to it from incestuous marriages.—Intercourse with sisters, its salutary influence would be lost.—The effects on other unmarried relatives living with the family (pp. 590-595).

Particular results.—i. on the *wedded pair* themselves.—A caution with regard to the reasons assigned.—a. Forced union of incompatible affections.—(Note on a seeming discrepancy between the author's doctrine and that of S. Thomas.)—b. Equality and reciprocity of affection in some cases impossible, in others difficult.—Difficulty increased by disparity of age.—c. Such marriages interfere with the subjection of wife to husband.—d. They deprive the wife of a refuge from the brutal treatment of her husband.—ii. The effect of incestuous marriages on the children.—a. On their physical constitution.—b. Such a marriage drives back the stream of life.—Analysis of this metaphor of S. Bonaventure.—c. It involves the probable loss of a father or mother's care in childhood.—d. It imperils equality of reverence for both parents.—e. It destroys the duality of family rule (pp. 595-604).

III. The effect of incestuous marriages on man in his relation to the moral order.—They would encourage lawless desires by allowing them an entrance within the family circle.

Three concluding notes.—1. The above reasons must not be taken singly, but in their collective force.—A caution as to the use of the word, *unnatural*.—2. In marriages between parents and children, all the reasons enumerated conspire.—They are certainly against the natural law.—3. The question of marriages within degrees of affinity deferred to the next chapter (pp. 604-608).

CHAPTER II.

POST-TRIDENTINE TEACHING.

Analogy between the natural and supernatural order.—Illustrated by Catholic Theology.—Natural Theology purely rational.—Catholic Theology built upon the premisses of faith.

Analogy between Divine and human faith.—The nature of faith, or credulity, philosophically considered.—Three differences between Divine and human faith.

The construction of Catholic Theology on the premisses of faith, *rational*.—In moral Theology it is the same.—Papal infallibility extends over both Theologies; but on our present question the Church has not spoken.—Our investigation, therefore, a process of reason.—Chiefly, however, historical, as concerned with the teaching of post-Tridentines (pp. 609-614).

Canons with regard to human testimony in its relation to moral philosophy, taken from Aristotle.—i. Universal testimony certainly true.—It must be

perpetual as well as general.—ii. Current opinions have a grave authority.—iii. The consentient opinion of all the learned and good, certainly true.—iv. The opinion of a majority of such, probable.—v. In a conflict of opinions, that of the majority is *ceteris paribus* more probable.—vi. Virtue must always have pre-eminence, especially when combined with learning, over mere numbers.—vii. One name of eminence, in the absence of any countervailing authority, enough to make an opinion probable.

Modification of these rules in moral Theology.—i. The authority of the *Ecclesia dispersa* or of the *Ecclesia docens*, infallibly true.—ii. It need not be perpetual.—iii. Duration and growth, a test of the truth of Theological opinions (pp. 614-619).

The subject of this chapter considered. — Some points certain, others uncertain.

Propositions that are certain.—I. Marriage between parent and child is annulled by the natural law.—II. Marriage within the second and further degrees of consanguinity in the collateral line, not annulled by the natural law.—Many marriages *prohibited* by that law, which it does not annul.—III. No marriage of affinity in the transverse or collateral line, annulled by the natural law.—IV. Marriage within the second and further degrees of affinity in the right line, not annulled by that law.—All these propositions are now indisputable (619-623).

Uncertain points.—Proposition V. It is more probable that the natural law does not annul marriage within any of the degrees of consanguinity in the right line, save the first.—Authorities for this proposition.—Authorities against it.—Intrinsic reasons in favour of it (pp. 623-626).

VI. It is more probable that the natural law does not annul marriage between brother and sister.—Authorities in favour of this proposition.—Authorities against it.—The intrinsic evidence in its favour conclusive.—a. God could not have arranged the creation of the human race, so as to make a violation of His own eternal and immutable Law necessary.—The plea of necessity worthless.—No satisfactory answer to this argument.—The solutions of Bellarmine rejected.—b. This argument confirmed from the history of Ammon.—c. From the practice of some heathen nations.—d. From the Council of Agde.—e. Such union does not interfere with the primary end of marriage.—Bellarmine's objections refuted (pp. 626-635).

VII. It is more probable that the natural law does not annul marriage within the first degree of affinity in the straight line.—Authorities in favour of this proposition.—Authorities against it.—Intrinsic reasons for its truth.—Objections considered and answered.

The natural law annuls marriage only in the first degree of consanguinity in the straight line, *i.e.* between parents and children. In all the rest the Pope can dispense.

Two remarks.—i. According to post-Tridentine teaching, the Pope cannot dispense in any fundamental prohibition of the natural law.—ii. According to the same authority, Papal usage is a sure guide in doctrinal questions (pp. 635-643).

EPILOGUE.

(pp. 647-649.)

APPENDIX A.—The eternal Law in its formal signification is a dictate of the practical reason, not an act of the will (pp. 653-658).

APPENDIX B.—The trees of consanguinity and affinity, comprising all the degrees of relationship within which marriage is forbidden by the law of the Catholic Church (pp. 659-661).

APPENDIX C.—Two letters on Leviticus xviii. from Canon Lamy, of the University of Louvain, and Dr. W. Smith, author of '*the Pentateuch*' (pp. 662-671).

APPENDIX D.—The Anglican Tables of prohibited degrees (pp. 672-674).

APPENDIX E.—S. Basil's letter to Diodorus,—text and English translation (pp. 675-680).

APPENDIX F.—A collection of passages from post-Tridentine Doctors, referred to in the second chapter of the *Doctrinal Postil* (pp. 681-720).





PROLOGUE.





PROLOGUE.

§ 1.

SUPPOSED PAPAL CONTRADICTIONS.

CORRIGENDA.

P. 696, line 14 from bottom, for "q" read "9."

P. 713, line 5 from top, for "linæ" read "lineæ."

P. 714, line 11 from top, for "q" read "9."

and yet should remain through the whole unshaken, undecaying,—ever progressing amid all vicissitudes, —floating secure, like the typical ark of Noe, over the ever-changing sea of human action.

And this unity,—reflex on earth of the inconceivably perfect unity of the Divine nature, was to owe its steady continuance to no mere human appliances. The Church was not allowed to carve a way for Herself by the sword; neither was She destined to depend, either in Her origin or Her persistence, on the efforts of individual genius, on the riches of the world, or on the influence and patronage of princes. Nay,—as we know by the event,—She was to be utterly unprovided with



PROLOGUE.

§ 1.

SUPPOSED PAPAL CONTRADICTIONS.

IN the counsels of the Divine will the kingdom of Jesus Christ was to be known, from its commencement onward through succeeding generations even unto the end, by its note of unity.

The unity
the Church

God in His mercy had determined to establish a standing marvel in the midst of the nations,—a marvel which should have force to arrest the attention and convince the judgment of the wisest, yet should not be above the apprehension of the most simple and unlettered, provided that the one and the other were in real earnest about the things which concern their eternal salvation. He had decreed to found a spiritual Empire upon earth, whose appointed end it was to reduce all peoples, nations, languages, and tribes beneath its sceptre, and yet should remain through the whole span of time one, unshaken, undecaying,—ever progressing amid all vicissitudes,—floating secure, like the typical ark of Noe, over the ever-changing sea of human action.

And this unity,—reflex on earth of the inconceivably perfect unity of the Divine nature, was to owe its steady continuance to no mere human appliances. The Church was not allowed to carve a way for Herself by the sword; neither was She destined to depend, either in Her origin or Her persistence, on the efforts of individual genius, on the riches of the world, or on the influence and patronage of princes. Nay,—as we know by the event,—She was to be utterly unprovided with

all these in Her great struggle with that last, vast, earthly Empire, which was destined to fall in pieces before the weakness of Her Cross.

Her unity
twofold;
unity of soul
and body.

It has been remarked in a former essay¹ that the unity of the Church, as of every other political corporation, has a double element. It includes within Itself unity of soul as well as unity of body. It extends, therefore, not only to the external organization of the Catholic commonwealth, but also, —and that, more particularly,—to Its principle of life. It not only embraces the subordination of member to member, and the well-ordered collocation of all in one visible communion; but It embraces, by a supernatural control, the action of the intellect within a certain, definite sphere of truth, and is itself the result of the subjugation of such action to the obedience of faith. It is true that there was to be one body. But there was also to be one spirit, one faith.

The Pope's
supremacy
and infalli-
bility divine-
ly ordained
for preserva-
tion of the
Church's
unity of
body and
soul.

This unity, for its preservation, was enshrined in one earthly head; that as Christ is the one great Head of the Church on the earth, under the earth, and in heaven, so the Pope, as His Vicar, should be in a secondary sense the one visible Head of the Church militant. And for this purpose he was strengthened by the Divine Will with a double gift. For the preservation of the Church's unity of soul, Christ bestowed on him the gift of infallibility; for the preservation of Her unity of body, Christ bestowed on him the gift of supremacy. And, now that God's will has been revealed to us, it is not too much to say that these two Papal prerogatives are *equally* necessary for the preservation of the Church's unity. Not but that God might in His infinite wisdom have invented other methods, if He had so pleased; but, *as a fact* and in the *actual* ordering of the Church, Papal infallibility is as necessary to preserve Her from heresy, as is Papal supremacy to save Her from schism. Moreover, there is a reasonable fitness in the means thus chosen for securing the proposed end, which confirms the Catholic in his sure confidence that the arrangements of God are always the best and wisest.

¹ Peace through the Truth. First series. Essay on the Unity of the Church, p. 3.

It is easy to see how intimately these two gifts, bestowed on Peter and his successors by the Divine Master, are intertwined. If the human soul is in such sort the form of the body that neither is complete without its partner, and the one is therefore the complement of the other, it needs no great perspicacity to perceive that in the Divine ordering of the Church (for the analogy is in this as in other respects complete), the unity of the soul must react on the unity of the body; and the gift which secures corporate unity must *pari passu* promote the unity of the faith. We should therefore be inclined to conclude, antecedently to all knowledge of the fact, that these two directive gifts would be centred in one person, lest perchance a separation between the unity of external organization and that of the inner life might supervene, resolving the Church into two personalities (so to speak), as the Nestorians separated Christ; and so destroying Her vitality, and as a consequence Her place in the history of the regeneration. And the Divine arrangement has confirmed the justice of such a conclusion. For the same voice, which, providing for the corporate unity of the Christian commonwealth, said to Simon, son of John, "*Thou art Cephas, and upon this Cephas I will build my Church . . . And I will give to thee the keys of the kingdom of heaven,*" (S. Matt. xvi. 19), said also to the same Apostle, providing for the unity of the faith, "*Simon, Simon, behold Satan hath desired to have you (ὑμᾶς, i.e. the whole Apostolic College), that he may sift you (ὑμᾶς) as wheat. But I have prayed for THEE, that THY faith fail not. And thou being once converted strengthen thy brethren*" (S. Luke xxii. 31, 32). Christ our Lord endowed S. Peter with this gift of infallibility, not for himself or for his own personal service, but for the sake of His Church; that the Apostle in his own person as in that of his successors might be ever ready, in time of danger and assault, to strengthen and confirm his brethren in that sound doctrine which was once for all delivered to the saints. As "*the Church of the living God*" was to be "*the pillar and ground of the truth*" (1 Tim. iv. 15) for all the nations of the earth; so the Pope was in like manner to be the pillar and ground of truth for the Church Herself.

Intimate
connecti
of these
Papal pr
rogatives

The object
of the Essay
not to prove,
but to re-
move diffi-
culties.

It has not been our intention in the foregoing observations to prove these truths of Catholic teaching by the testimony of God's word, whether written or unwritten. Such a course would have been beside our purpose, which throughout these essays has always been the same. We have been occupied, and shall continue to be occupied till our work is accomplished, with the one task of clearing away such difficulties as Dr. Pusey in his *Eirenicon* has thrown in the way of those who are seeking their salvation, and who have already conceived a strong suspicion that truth and peace can be found in the bosom of the Catholic Roman Church alone. Dr. Pusey's effort has been to hinder their progress; ours will be to remove the hindrance. It is true that, in the course of our inquiry, ample proofs from early tradition will be given of the existence and energetic action of Papal supremacy and Papal infallibility in the Primitive Church, prior to the great Greek schism. But the production of such proof has been rendered necessary by the very nature of Dr. Pusey's difficulties. And though we purpose to take advantage of the opportunity, and to delay at some length upon this branch of our subject, as containing within itself a demonstrative force which is peculiarly adapted to arrest the attention and convince the judgment of the unprejudiced inquirer; yet we must again repeat that our main object has been, and is, to clear the ground for those who are yearning after certainty and rest, by resolving objections which have been paraded before them with no little earnestness of expression,—and, may we add?, with some considerable ostentation,—as though they were unanswerable, and at the same time undeniably fatal to the claims of the Roman See on their allegiance. It is the more necessary to insist upon this, because the writer has been blamed in some reviews, otherwise kindly and impartial, of his first series of essays, for omitting to discuss questions which lay quite out of his beat. The doctrines of the supremacy and infallibility of the Pope are of the highest importance, and deserve to be treated with all the care and calm accuracy which dogmatic Theology can bring to bear upon them. But this is not our task at present. Our endeavour is polemic, not dogmatic; preparative, not final.

To resume. If the supremacy and infallibility of the Pope are the foundation on which the unity of Christ's kingdom rests and is preserved inviolate, it follows that to attack them is to attack the very existence of the Church, and that the rejection of the former is a virtual denial of the latter. It cannot therefore be matter for surprise, if we find that, from the first germ of the schismatical spirit in the Eastern Church down to the present hour, these two doctrines, either separately or together, have been the object of attack on the part of those who have endeavoured to corrupt Her faith, or rend Her corporate unity. It is the simplest, easiest, most efficacious plan of war. It marches straight to the citadel, instead of wasting time at the outworks. Henry VIII., our first English reformer, tried the method, and with signal success. He left the great Creeds and ritual untouched, and contented himself with transferring the supremacy from the Pope to himself and his successors. A few years elapsed; and the anticipated result was realized. In the reign of Edward VI. the assault against the ancient Creed and ritual began. But it was more systematically and solidly pursued in the after-reign of Elizabeth. The foundation once destroyed, the superstructure fell by its own unsupported weight. Anglican writers have, as a body, followed in the wake of the royal founder of their establishment. Differing among themselves on almost every point of doctrine,—many of them adopting more or less of the Catholic creed in the exercise of their private judgment,—yet on one point they are all agreed. They reject the supremacy of the Pope; they refuse to believe in his infallibility. Even the most advanced among them, while conceding to Peter and his successors a primacy of order, have uniformly and stoutly contended against a supremacy of jurisdiction. They are free to allow to the Pope the first place among his equals. They will consent to acknowledge him as chairman of an Ecumenical Council. But they resolutely reject all idea of a supreme, living, personal power, which binds the whole hierarchy to Peter's chair as the Divinely appointed centre of unity. They equally refuse him that infallible judgment in matters of faith and morals, which can alone preserve the Church through all time from the inroads of heresy, and the dangers of false development.

Heresy
cially fo
ward in
tacking
Papal p
rogative

Dr. Pusey
assails them.

Dr. Pusey forms no exception to the rule. It is true that his objections to the doctrine of infallibility are slightly modified by the peculiar nature of his argument. He is directly opposing himself to a modern expansion of this doctrine, which, —whatever may be its merits or demerits,—may be safely relegated to the category of open questions. Nor, if the force of Dr. Pusey's objections had borne heavily on that theory alone, should we have cared to examine them. But they do not tell against it only. They are equally cogent against that doctrine of infallibility which has been commonly taught in the Church's schools of a long time past, and has been recently added to the articles of faith. For if the Supreme Pontiff, under the guidance of the Holy Ghost, is always preserved from error in his *ex cathedra* decisions concerning matters of faith and morals, under whatever shape those decisions may appear, it is obviously impossible that he should ever in such decisions teach what is at variance with the expressed judgment of either his predecessors or successors on the same subject-matter. But it so happens that all the examples of so-called Papal contradictions, put forward by Dr. Pusey, are either explicitly or virtually connected with matters of faith or morals. If such contradictions really existed, they would therefore tell with equal force against the doctrine about which Catholics are universally agreed, as against the particular theory which is the direct object of attack. If then we should succeed in proving,—as we have a sure confidence of being able to do,—that in no one of the alleged examples does there exist a shadow of contradiction, we shall be thereby, indirectly at least, vindicating the doctrine of Papal infallibility in matters of faith and morals from the historic difficulties which seem to beset it; and which may perhaps have hindered many from accepting its authoritative guidance in the midst of that political, social, moral, and religious anarchy, which is characteristic of the present time.

Dr. Pusey's
statement
concerning
Papal infal-
libility.

Dr. Pusey, then, opens ground on this question in a postscript subjoined to his Eirenicon. He says, "*I had finished my letter, and it had been some time in type, before Dr. Manning was elevated to his present important position, or the reading of the Encyclical of last year, and the comments upon*

*it, had shown me how advanced, above all which was known formerly, is the present theory of Papal infallibility. The Ultramontanes in the Roman Communion seem to be drifting off further from the principles of the early and undivided Church."*¹

He then proceeds to examine the late syllabus of the reigning Pontiff in its relation more especially to that modern theory of Papal infallibility of which we have before spoken, and concludes in these words: "*This extension of Papal Infallibility would, I should think, embarrass the defence of the system. For those who have denied the personal infallibility of the Pope, like Bossuet, have confined themselves to pointing out those cases in which any Pope seemed to have fallen into great and obvious error. Now, since every portion of the teaching of any Pope is to be infallible, it will apparently have to be shown how any statement of any Pope which has since been abandoned is consistent with such infallibility.*"² Dr. Pusey then goes on to illustrate this difficulty by placing before his readers a series of supposed Papal contradictions, of which he says, "*I have set down no difficulty which I do not myself think insurmountable. I see absolutely no way in which, upon the forbidden degrees, Alexander VI. can be reconciled with Gregory I., or how the acceptance of the sixth General Council, which anathematized Honorius as a heretic, by Leo II., and his own individual condemnation of him, are reconcileable with the doctrine of the infallibility of both, in all which they pronounce, &c.*"³ And he winds up by saying, "*These are but specimens of the inextricable difficulties, in which, I fear, the Roman Church would involve itself by acceding to this doctrine of the Papal infallibility, not only as to matters of faith and doctrine, but as to matters not connected therewith, and even as to historical facts.*"⁴

We are not aware that any known writer has gone to the absurd extremes, which Dr. Pusey has in this last passage delineated; and if there be, we should not be careful to burden ourselves with his defence. But it is easy to gather from the above quotations that these difficulties, which Dr. Pusey has set in battle-array, have been to himself a serious hindrance in the way of his submission to the Catholic Church.

Important
of the ques-
tion.

¹ Eirenicon, p. 257.

² p. 305.

³ p. 317.

⁴ p. 318.

It is equally certain that both these classes of difficulties have produced a like effect on the minds of very many, who, if their judgments could be reformed by a satisfactory solution, would not be able to resist the claims and attractions which the Catholic Church offers to their intellect and heart. It is for this reason that the task, which we have undertaken, has been a welcome labour. We have been informed on reliable authority, that the subject-matter of the present essays presents the only remaining stumbling-block in the way of many, whose eyes have been for some while turned wistfully towards the great centre of unity,—that one Apostolic throne which has survived the assaults of time. Happy our toil, if we could help such as these a step onward on their road! Happy too, if our efforts should succeed in removing any such obstacles out of the pathway of one, with whom we have unhappily had to deal as stern controversialists, but for whom personally we feel the deepest sympathy!

We propose, then, to examine Dr. Pusey's supposed Papal contradictions in detail, taking them one by one, if life and sufficient leisure are granted us. If the work is to be done at all, it must be done thoroughly; for a superficial solution to difficulties so practically important as these is a wound inflicted on the Church, an indictment against the capacity or earnestness of the writer, a grave injustice to the inquiring reader, and a culpable negligence in what concerns the interests of Divine Truth.

We shall find that the task of examining one of these cases will be amply sufficient to occupy us in the present volume; the rest, therefore, must be reserved for a future occasion.

§ 2.

A SUMMARY ANSWER TO THE FIRST SUPPOSED PAPAL CONTRADICTION OF DR. PUSEY.

Dr. Pusey's
first Papal
contradiction.

Dr. Pusey's first example of a supposed Papal contradiction is thus given by its author. "To take the one subject of prohibited marriages. S. Gregory the Great declares on the ground of Leviticus c. 18, that marriage 'with a sister-in-law

is forbidden, because through her former union she became the brother's flesh.' In a formal answer to an enquiry of S. Augustine of Canterbury, 'at what degree of consanguinity may the faithful marry, and may marriage be contracted with step-mothers or sisters-in-law?' S. Gregory states, 'it is necessary that, in order to marry lawfully, they should be in the third or fourth degree', *i.e.* second or third cousins, and prohibits, on ground of Divine law, marriage with the sister-in-law, as well as with the mother-in-law. This was directly contradicted by the unhappy Borgia, (Alexander VI.,) who gave a dispensation to marry a sister-in-law and an aunt. But Pope Innocent III. answered formally, that in the degrees, prohibited by the Divine law, a dispensation *cannot be given*—'*dispensari non potest.*'" (The italics are the author's.) "He spoke, in three epistles, of degrees prohibited 'by Divine law;' *i.e.* as explained, and according to the known use of the term 'the Levitical law.' Cardinal de Turrecremata, acting by command of Pope Eugenius, pronounced that 'the Pope *could not dispense,*' when the Dauphin asked to be allowed to marry his deceased wife's sister." ¹

And, again, returning to the point, after he has closed his list of difficulties, as though it had made an impression on his mind which he could not shake off, he adds,

"I see absolutely no way in which, upon the prohibited degrees, Alexander VI. can be reconciled with Gregory I." ²

Well, we will try our best to rid Dr. Pusey of this spectral contradiction, which seems to stand between him and the Chair of infallible truth.

To this end, we begin by drawing out his argument in form, as follows :

Develop
in form.

S. Gregory the Great declares that marriage with a sister-in-law is forbidden; that marriages are prohibited within the third or fourth degrees of consanguinity; and he bases his judgment on the authority of the Levitical law. Innocent III. declares that in marriages prohibited by the Divine law a dispensation cannot be given. But by Divine law he evidently means the Levitical law. So, then, two Popes at two

¹ The Eirenicon, pp. 305, 306.

² Ibidem, p. 317.

different epochs of the Church's history give it as their formal judgment that marriage within the degrees specified in the Levitical law is prohibited by Divine authority, and that, consequently, no Pope can dispense in such cases. One of them distinctly and by name prohibits marriage with a sister-in-law; and this prohibition is confirmed by Eugenius IV.

On the other hand, Alexander VI. gives a dispensation for the marriage, now of one king with his sister-in-law, now of another king with his aunt.

We are thus confronted with a manifest contradiction in the formal teaching of Papal authority, which it is impossible to reconcile.

The answer.

Such is Dr. Pusey's difficulty. But there is an answer to it at once so obvious and so overwhelmingly conclusive, that we marvel how it could have escaped the writer's notice, unless indeed he should have fallen into the vulgar error of confounding infallibility with impeccability. Is it not evident on the face of it how, in order to adduce anything like an example of Papal contradiction which could affect the claim of the Supreme Pontiff to personal infallibility as interpreted to us even by the most extreme of modern theories, it is of necessity that two Papal decrees *ex cathedra* should be put in evidence, and that these two Papal decrees should be mutually repugnant? The word itself, *contradiction*, conveys the idea of some opposition of speech, whether oral or written. But in the instance alleged, Alexander VI. is not supposed to say a word. He makes no statement, issues no doctrinal Bull, publishes no encyclical. He simply *does* what other Popes are supposed to assert that he has no right to do. What, if "*the unhappy Borgias*" did wrong? What, if he transgressed the limits of his just authority, which we should, of course, be the last to admit? Would such a fact impinge one iota upon his infallibility? Most assuredly not, unless the Pope's gift of infallibility is supposed to preserve him from the possibility of sin, or of practical error and imprudence. Yet who has ever heard that such an immunity has been claimed for the Vicar of Christ by any Catholic theologian of whatever school? The plain truth is that this first supposed example of the Oxford professor has no more to do with the dogma of

Papal infallibility than it has to do with that of original sin and human peccability, or rather, not so much.

However, we do not mean to repose upon this evident solution. Not that it is insufficient of itself; but it would be unfeeling to leave even "the *unhappy Borgia*" under the unjust imputation of doing what was grievously wrong, when the fact is that he did what, according to the unanimous judgment of Post-Tridentine Catholic Theologians, he was perfectly entitled to do, and what other Popes have repeatedly done as well as he. There is another advantage which will accrue from a more detailed examination of the question; for the proposed inquiry will not only afford us an opportunity of pointing out certain misapprehensions of Catholic doctrine into which Dr. Pusey has fallen, but it will also impose upon us the far more welcome task of expounding certain fundamental principles in the Church's moral Theology, which will prove to be of general interest, bearing, as they do, upon prominent subjects of religious and moral discussion, which at present arrest the attention of this age and country.

The subject, from its importance, requires further examination.

In order to set the question before the reader with clearness and precision, it will be necessary to institute a preliminary inquiry as to the nature and principal divisions of law; for we are not in the condition to form a just judgment upon the particular matter which Dr. Pusey has brought before our notice, unless we have formed a right understanding concerning the several kinds of law and their respective relation to the human conscience.

Statement of prolegomena.





FUNDAMENTAL PRINCIPLES.



FUNDAMENTAL PRINCIPLES.

CHAPTER I.

DIVINE LAW, ITS PRINCIPAL DIVISIONS, AND RELATION TO MAN.

LAW, in its most extensive and least determinate signification, includes, as essential to its very nature, the idea of a certain order. But order, if we analyze the notion, presupposes an intelligent being, capable at once of conceiving that moral unity which we call order, and invested with power to evolve such moral unity out of the material which he contemplates. Considering this intelligent being in his relation to the order of which he is the efficient cause, we call him the legislator or lawgiver. Idea of law

Law, thus vaguely understood, may be considered either *objectively* or *subjectively* : *objectively* considered, it consists of the practical idea existing in the mind of the legislator, together with the executive power of his will. *Subjectively* considered, law is this same idea of order realized in the subject, or subjects, of legislation. It is at once apparent that the former must exist prior to, and may exist independent of the other. For the design or idea must exist, *in order of nature*¹ at least, before its actual execution ; while the plan may be conceived, yet never carried into effect. In this latter case, however, the idea of order would receive the name of law only by an analogous application of the term. Considered objectively and subjectively.

If we apply this short analysis of the word to what is termed Divine law (and with it alone we are concerned in the present Application to Divine law.

¹ Priority *in order of nature* is distinguished from priority *in order of time*. The former exists wherever of two terms one is dependent on, the second independent of the other. For instance, a cause is prior to its effect in order of nature, though in order of time the two might chance to be synchronous.

essay), we are at once introduced to the most extended and indefinite meaning of that expression. For, considered *objectively*, it will simply stand for that infinite Wisdom of God by which all creatures, irrational as well as rational, are so ordered according to the various capacity of their respective natures as to tend, by an innate propulsion or instinct of their being, towards the common good of the universe and the one end for which they were created. We may, therefore, with the Angelic Doctor, define the Divine law, thus understood, to be, "The Divine Wisdom considered as the Director of all acts and movements";¹ or, if we consider this order or direction in connection with the Divine Will, we may accept the definition of S. Austin, that "The eternal law is the Divine Reason or Will, which enjoins the preservation, and forbids the disturbance of the natural order."² In this latter way it is identified more or less with the Divine Providence, which, as Suarez defines it, is "the method of governance of the whole creation, existing from all eternity in the mind of God."³ There is this difference between the two, that the Divine Providence formally regards this disposition of means to the attainment of the end, while the Divine law explicitly refers to the imposition of such disposition on the creature. If, again, we consider the Divine law *subjectively* in the same vague and analogous meaning of the term, it is none other than that natural inclination, implanted by the great Creator in every portion of His creation, according to which each creature tends not only to its own immediate end, but also towards the common good of the universe.

But the law of God, as it is usually understood, has a less extensive indeed, but far more definite meaning. For the term is specially applied to the Divine Wisdom⁴ as being the

ore pre-
se idea of
ivine law.

¹ Ratio Divinae Sapientiae moventis omnia ad debitum finem, obtinet rationem legis. Et secundum hoc lex aeterna nihil aliud est quam ratio Divinae Sapientiae secundum quod est directiva omnium actuum et motionum.—1. 2ae. xlii. l. in c.

² Lex aeterna est Divina ratio vel voluntas Dei, ordinem naturalem conservari jubens, perturbari vetans.—q. Faustam, l. xxii. c. 27.

³ Providentia est ratio gubernationis rerum omnium ex aeternitate existens in mente Divina.—De Legibus, ii. 3. n. 11.

⁴ See Appendix A.

supreme canon or rule of the free action of the intellectual creature, which it morally directs towards the end for which that creature was created. The Divine law, so understood, is either *natural* or *positive*. To take the natural law first, as being first in order of dignity: it vindicates to itself this special excellence, that it is rooted in the antecedent fitness or unfitness,—in the intrinsic goodness or baseness of actions, and is essentially identified with the infinite and changeless sanctity of God, of which it is the partial expression. Its foundation, therefore, is laid deep in the bosom of God; and is consequently as immutable as He is. God even cannot alter it, seeing that He cannot alter His own adorable nature. Nor must it be supposed that His omnipotence is thereby limited; for what limit can it receive from the negation of a practical impossibility that is simply exclusive of imperfection and self-contradiction from His sphere of action? It is by reason of this its pre-eminence that the eternal or natural law of God is emphatically *the* law. It is the one only basis of all law; and human law, in all its various ramifications, is at best but a sort of superstructure. All national communities—all governments—all families—all persons necessarily lie under its rule, as so many parts of the one world-wide confederation, over which God is the supreme Lawgiver. This Divine law, therefore, is the principle of moral unity, of order, of true civilization. It brings together tribes and nations, peoples and tongues, by uniting them, as one great family, in a general conspiracy towards the attainment of their common beatitude,—the end for which they were created. “By it kings reign, and lawgivers decree just things. By it princes rule, and the mighty decree justice.”¹ Without it there is no true authority of government; without it, no true sanction to the acts of legislation. It is the light of the family, an unerring rule for the individual conscience. Wherever and whenever there has been foreign or civil war,—revolution and anarchy,—sin and social misery, there and then has its voice been stifled, and daring revolt broken out against its rightful supremacy.

This eternal law of God rules in heaven as on earth. It is

Divided i
natural a
positive.
The etern
or natura
law con-
sidered;

in its re
tion to m
on earth,

in its re
tion to t

¹ Proverbs viii. 15, 16.

court of
heaven.

the ceaseless life and unity of the nine Choirs, and, so to speak, forms them into one celestial commonwealth ; yet it rules not over angels after the same fashion as it rules over men on earth, but rather according to a more perfect order. For the angels live ever face to face with the Legislator and in presence of His law, since both are One. The will of the Blessed, therefore, is forced by a sweet compulsion to the perfection of obedience, and its freedom is thus far conquered by the irresistible attractions of the Holy One.

Objectively,
it is eternal.

As yet we have been considering this law more or less objectively, or, in other words, as it is in God ; and, so regarded, it is most justly called eternal, not only because all the Divine ideas are eternal—for in such wise it would differ in nothing from the positive law of God, from which, nevertheless, it is distinguished by this special attribute,—but more particularly because its own efficacy does not depend upon the free will of God, seeing that, as we have stated before, it is immutably founded on those necessary principles of right and wrong, which are the ideas,—to speak after the manner of men,—of the Divine Wisdom contemplating His own Holiness as direction and rule of the moral action of the creature.

Its promul-
gation.

This eternal law, like all law, requires promulgation as complement of its perfection. For law, of its very nature, includes within it an obligatory force, which it cannot have unless it be known. But in order to be known, it must be promulgated. In the present case, the promulgation of the law is the knowledge of it which man acquires by the due exercise of his natural faculties. Hence, *subjectively* considered, it is called the *natural* law, which is no other than the eternal law consciously present in the mind of man. Accordingly, the Angelic Doctor defines the natural law to be “a knowledge naturally belonging to man, by the which he is guided to act aright in what he does . . . All that renders action unsuited to the end which nature intends as result of any operation, is said to be against the natural law.”¹ In the *Summa*

Subjectively
considered,
it is the
natural law.

¹ Lex naturalis nihil est aliud quam conceptio homini naturaliter indita, qua dirigitur ad convenienter agendum in actionibus propriis Omne autem illud quod actionem inconvenientem reddit fini quem natura ex opere aliquo intendit, contra legem naturæ esse dicitur.—In 4. d. xxxiii. Q. 1. a. 1. in c.

he is still clearer and more explicit. "Since," he writes, "law is a rule and measure, it can exist in somebody after a double fashion:—in one way, as in him who rules and measures; in another way, as in that which is ruled or measured; because in so far forth as anything participates of rule or measure, in like proportion is it ruled or measured. Hence, forasmuch as all things, which are subject to God's Providence, are regulated and measured by the eternal law . . . it is plain that all participate after a sort in the eternal law, seeing that they have, from its impress in them, inclination to their proper action and end. But, beyond all others, the rational creature is subject in a more excellent way to the Providence of God, since it is made a partner in this providence, as exercising a prevision over itself and others. Hence it is made a partaker of the eternal reason, by which it has a natural inclination towards its proper action and end. And such a participation of the eternal law by the rational creature is called the natural law . . . Hence it is clear that the natural law is nothing else than a participation of the eternal law existing in the rational creature."¹

To adopt, then, this admirable distinction of S. Thomas,—if we consider the Divine law as existing in Him who is its Rule and Measure, (for His Wisdom is its substance, and His Will its sanction,) it is called the *eternal* law; if we consider it as impressed upon the rational creature, it is called the *natural* law.

That this law reveals itself to the intellect of man, is too evident to require proof. The universal consciousness of a

The nature
of its promulga-
tion

¹ Lex cum sit regula et mensura, dupliciter potest esse in aliquo; uno modo sicut in regulante et mensurante; alio modo sicut in regulato et mensurato; quia in quantum participat aliquid de regula vel mensura, sic regulatur vel mensuratur. Unde cum omnia quæ Divinæ Providentiæ subduntur, a lege æterna reguntur et mensurentur . . . manifestum est quod omnia participant aequaliter legem æternam, in quantum scilicet ex impressione ejus habent inclinationes in proprios actus et fines. Inter cætera autem rationalis creatura excellentiori quodam modo Divinæ Providentiæ subjacet, in quantum et ipsa fit providentiæ particeps, sibi ipsi et aliis providens. Unde et in ipsa participatur ratio æterna, per quam habet naturalem inclinationem ad debitum actum et finem. Et talis participatio legis æternæ in rationali creatura lex naturalis dicitur . . . Unde patet quod lex naturalis nihil aliud est quam participatio legis æternæ in rationali creatura.—1. 2æ. xci. 2. in c.

certain order to be observed in the actions of life,—of a definite end attainable by due selection of means,—of certain first principles of right and wrong, beyond the reach of popular will or popular opinion,—of accountability to an authority which claims supremacy over man and all human institutions,—this is a primitive fact too general to be ignored, too patent to our individual introspection, to be gainsayed. The perverse will of some would-be philosopher may from time to time venture against its reality with an all-embracing doubt; but the voice of mankind, and the invincible testimony of conscience, are ever ready to confront him.

It is un-
changeable.

Essential
difference
between
natural and
positive law.

It follows from what has preceded, that the natural law is incapable of change. For it is a participation of the eternal law; and the intellectual creature, by virtue of this participation, receives a natural inclination towards its end, as well as towards the actions which conduce to the attainment of such end. There is, therefore, as Suarez¹ justly remarks, this great difference between the natural law and all others, that these latter, by reason of their sanction, make that which was indifferent prior to their promulgation, to be good or bad, according as they enjoin or prohibit; whereas the natural law presupposes in the act or object the rectitude which it enforces, or the turpitude which it forbids. The one gives moral colour to its object by its own appointment; the other is appointed by nature, because of the moral colour essentially inherent in the object. The one constitutes, the other presupposes right and wrong. Such is the fundamental difference between natural and positive law. The natural law, accordingly, includes all the first principles of moral conduct; and is, in consequence, no more capable of change, or subject to repeal or suspension, than is the nature of man or the Wisdom of God. Therefore, no human power or authority,—not even that of the Supreme Pontiff,—can abrogate, lessen, or dispense

¹ In hoc differt lex naturalis ab aliis legibus, quod alii faciunt esse malum quod prohibent, et necessarium vel honestum quod præcipiunt; hæc vero supponit in actu seu objecto honestatem, quam præcipiat, vel turpitudinem quam prohibeat; et ideo dici solet, per hanc legem prohiberi aliquid quia malum, vel præcipi, quia bonum.—De Legibus, l. ii. c. 7. n. 1.

in a given case with any of its precepts.¹ God himself, as we have remarked already, cannot do it.

If it should be asked *how* this law is revealed to the individual conscience, we must, with S. Thomas, reply in the words of the Psalmist, "*The light of Thy countenance, O Lord, is stamped upon us*" (Signatum est super nos lumen vultus tui, Domine).² As soon as the understanding and reason begin to energize, these first principles of the moral order present themselves to the individual consciousness in all the light of their objective evidence, and in their native necessity and immutability. Reason has here no place; for the understanding is at once compelled to an assent by virtue of that light of evidence which surrounds them. If, again, we should be asked to say, in what precisely this evidence consists, we answer that it is too much like light to allow of the analysis necessary to all definition; but thus much we can affirm with safety, that it arises from the nearness of these principles to the uncreated Light of the Divine Wisdom, of which they are the partial expression. They shine with the Divine brightness; and in that brightness the intellect of man, itself a likeness of the Divine mind, contemplates, and immediately embraces them; so that in the twofold order,—subjective as well as objective,—the words of the Psalmist, already quoted, are sufficiently verified. Nor must it be supposed that, because this evidence, by reason of its simplicity, is difficult of definition, it is therefore of doubtful existence. For the universal experience of all ages confirms the words of S. Paul, where, alluding to those who were unacquainted with the revealed law, he says; "*These having not the law, are a law to themselves; who show the work of the law written in their hearts, their conscience bearing witness to them, and their thoughts within themselves accusing them, or else defending them.*"³

Method
promulg
tion.

But, besides this eternal or natural law, according to which it is necessary that all men in all times and in all places should, by the very exigencies of their nature, be governed and directed

The Divi
positive 1

¹ Nulla potestas humana, etiamsi Pontificia sit, potest proprium aliquod præceptum legis naturalis abrogare, nec illud proprie et in se minuere, neque in illo dispensare.—Suarez, de Legibus, l. ii. c. 14. n. 8.

² Psalm iv. 7.

³ Rom. ii. 14, 15.

in the prosecution of their proper end, God gave to His elect people by His servant Moses a positive law, to be the basis and informing life of the nascent Theocracy, as well as a sufficient code of social, political, and liturgical duties. It is undoubtedly true that the Divine legislation on Mount Sinai repeated and confirmed, by the sanction of an express Revelation, the great precepts of the natural law, and thus gave them new life and authority in the midst of Israel. But it is quite unnecessary to retrace our steps by considering this portion of the Jewish law, seeing that it differs in nothing *intrinsically* from the natural law common to all nations, and only adds to it that cogency of sanction and authority of evidence which is derived from Divine Revelation. Our present concern, therefore, is with that greater portion of the Sinaitic law which is simply positive.

nature of
positive law.

We have already set before the reader the nature and characteristics of positive, as distinguished from natural law; but inasmuch as it is of the highest importance to a due estimate of the questions looming in the distance that he should be familiar with their respective properties, we will restate precisely what is meant by positive law. With Suarez,¹ then, for our guide, we say that positive law is that which is not implanted in the constitution of our nature, nor flows necessarily from the natural law, but is a simple addition made to this latter by duly constituted authority from without. It does not presuppose, as we said before, it constitutes right or wrong in the object of legislation;—and right or wrong, moreover, only for so long as the law is in force. Hence its name.

application
to the Levitical
code.

If we apply these remarks to the positive portion of the Sinaitic code, it will be apparent that the obligation of this law did not extend beyond the limits of the Jewish people.² And even in those cases in which its precepts were simply reinforcements of the natural law, these latter did not oblige the Gentiles by virtue of their promulgation from the holy

¹ Sciendum est illam legem vocari positivam, quæ non est innata cum natura vel gratia; sed ultra illas ab aliquo principio extrinseco habente potestatem posita est. Inde enim positiva dicta est, quasi addita naturali legi; non ex illa necessario manans.—De Legibus, l. i. 3. n. 13.

² 1. 2æ. xcvi. 5. in c.; cf. 3. d. xxv. Q. 2, a. 2. q. 2. ad 3.

mount of legislation, but in the strength of an anterior and universal promulgation in the conscience of the whole human family. Within the commonwealth of Israel, however, they had the force of law, not only by reason of this first natural promulgation common to all mankind, but likewise because of that second Divine promulgation, which was reserved for the chosen seed of Abraham. The same supreme sanction gave to the whole Levitical code an authority, that bound each child of the circumcision by strictest obligation; nor could it be abrogated in whole or in part, save by that one great Law-giver Whose appointment it was. Nay, further than this, it would appear that He alone could grant a dispensation from the observance of any part of it, because He had reserved this power to Himself.¹

The precepts of the old law have been divided into three classes; for they were either moral, ceremonial, or judicial in their character.²

Division of
the Mosai
law into,—
1. moral;
ceremonial
3. judicial
Moral pre-
cepts; the
nature.

The first class constitutes that repetition of the natural law, of which we have already spoken, and is principally included in the Decalogue. Nor let it be supposed that such a repetition was useless or unnecessary; for, while a Divine Revelation gave it a sanction, as we have already noticed, which it could not have received from the mere voice of conscience, it at the same time afforded further insight into its requirements, and a wider and more certain acquaintance with its application. While it is most true that the more general canons of right and wrong are so evident as to arrest the intellect of the simplest and most unlearned, yet it must not be forgotten that the practical conclusions deducible from them,—those many rules of action which lie hidden in the obscurity of their subject matter,—are in many cases so recondite, and so easily escape or transcend the observation of the many, that man needs a Divine teaching in order to be able to apply to the will those principles which, of themselves, by reason of their universality, are more or less unpractical. Such teaching was temporarily provided for the favoured people in the moral precepts of their law.

But these moral precepts of the Sinaitic code were not sufficient guides for the Jew, who, raised into a supernatural

Further
cepts nec-
essary for
Jews.

¹ Suarez, de Leg., l. ix. c. 9. nn. 4, 5.

² 1. 2æ. xcix.; cf. Deut. vi. 1.

order, was equally subject with the Gentile to the varied influences of ignorance and prejudice on the intellect, and of passions on the will, which alike tended to obscure the light of conscience. That very practical conflict between "*the law of the mind*" and "*the law of the members*," of which S. Paul speaks in his Epistle to the Romans, indicated a need which finds its expression in human law. The *positive* law of the Pentateuch provided for this need according to the exigencies of the time, the condition of the people for whom it was provided, and the provisional character of the dispensation. Things indifferent were invested with a significance, not proper to their nature, by virtue of a series of commandments which put them into a newly-created relation with the moral order. And, forasmuch as the duty of man contemplates two terms of its obligation, *i.e.* God and one's neighbour (which logically divide the tables of the law), the positive precepts of the Sinaitic code branch off into two distinct classes, of which the one determines what relates to God, the other, what relates to our neighbour. The former class are called *ceremonial*, the latter class, *judicial* precepts.

Difference between ceremonial and judicial precepts.

Subdivision of ceremonial precepts into those pertaining to,—
1. sacrifices;
2. things sacred;
3. sacraments;
4. observances.

The ceremonial precepts are subdivided by the Angelic Doctor,¹ on the authority of Holy Scripture, into four kinds. For the worship of God, to which such precepts evidently refer, involves three terms, and three terms only, of legislation. These are; first of all, the order of Divine worship itself; secondly, the special instruments of worship; in the last place, the worshippers *as such*. The worship consisted in *sacrifices*; the instruments of worship are *things sacred* or set apart; and the worshippers are either consecrated to the service of God by *sacraments*, or are distinguished from such as are not worshippers of God by *special observances*. The ceremonial precepts, therefore, of the old Law treated either of sacrifices, or of things sacred, or of sacraments, or of special observances, such as distinctions of meat, and the like.

Nature of judicial precepts; distinction from the other classes.

Judicial precepts in some measure partake of the nature of what are called the moral, in some measure of what are called

¹ 1. 2^æ. ci. 4. in c.; et Quol. Q. ii. a. 8. in c. See Numbers xv. 24; Levit. vii. 35; Exod. xxxviii. 21; 3 Kings ix. 6, where each of the classes of precepts receives the name of ceremonies.

the ceremonial precepts, yet differ from both. They agree with the former in regulating the conduct and action of man with man; in which respect they differ from the latter. They agree with the latter in being simply positive, the ordinance of the Divine Freewill; in which they differ from the former. They therefore, like the ceremonial injunctions, derive all their obligatory force from direct Divine institution, and have no life or virtue antecedently to their actual enactment. Consequently, they are not eternal and unchanging; but can be abrogated, directly or indirectly, as the case may be, by the same Legislator who first imposed them.¹ Naturally, however, they are more closely allied to the moral than to the ceremonial commandments, not only by reason of their subject matter, but more especially because they invariably presuppose a principle of the moral law on which they are founded, and of which they are a Divinely-appointed safeguard. As this class of precepts has an important part to play in the solution of the question mooted by Dr. Pusey in this his first example of a supposed Papal contradiction, it will be useful to give an instance or two of what is meant by a judicial precept. Let our first instance be the Divine injunction to pay tithes. It is assuredly a dictate of natural justice that they "*who serve the altar, should partake with the altar,*"² and that the people should contribute to the service of God. But that precisely the tithe of all they possess should be set apart by the laity rather than an eighth or a twentieth part, is in itself indifferent, and therefore wholly depends on the good pleasure of the Legislator. Take another instance: "*If any man steal an ox or a sheep, and kill or sell it, he shall restore five oxen for one ox, and four sheep for one sheep.*"³ This precept is plainly based on the moral principle that where an injustice has been committed, restitution must be fully made; but the particular restitution of five for one, in the case of the ox, and of four for one, in the case of the sheep, is evidently quite arbitrary. So again; "*If a man have a stubborn and unruly son, who*

Examples

¹ Præcepta ceremonialia vel juris positivi non reducantur ad naturalia, quasi ex ipsa natura vim obligandi habeant; sed hoc habent ex voluntate instituentis.—D. Thom., in 3. d. xxxvii. Q. 1. a. 3. ad 2; cf. c. articuli.

² 1 Cor. ix. 13.

³ Exod. xxii. 1.

will not hear the commandments of his father or mother, and being corrected, slighteth obedience: They shall take him, and bring him to the ancients of the city, and to the gate of judgment, And shall say to them; This our son is rebellious and stubborn; he slighteth hearing our admonitions; he giveth himself to revelling, and to debauchery and banquetings: The people of the city shall stone him, and he shall die."¹ This judicial precept is an application of the primary commandment in the second table of the Decalogue; but who would venture to assert that the particular punishment here prescribed for filial disobedience forms any part of the eternal law, or is founded on the essential nature of things? With yet greater reason might we put the same question with respect to the following precept, which shall be our last example. "*If an ox gore a man or a woman, and they die, he shall be stoned; and his flesh shall not be eaten, but the owner of the ox shall be quit.*"² In all these instances the reader will have perceived the active presence of a moral principle which animates the judicial precept, and is vindicated by its special sanction; but the injunction itself is clearly enough a strictly positive statute, and therefore revocable at pleasure by Him Who ordained it.

The Jewish
law provi-
sional.

The inquiry which we have just instituted, touching the constituents of the Mosaic law, must have excited in the mind of the reader a conviction that the Divine legislation, proclaimed from Mount Sinai, was not intended to be final. And that conviction is strengthened by a closer examination. For the enactments of the Pentateuch,—numerous and complicated as they are,—bear on their front the mark or note of something provisional. They are, first of all, merely local, confined to one people, when they are not a simple repetition of the universal natural law; yet God is the Father and supreme King of all the earth. Then, again, those of them which are ceremonial abound in what is purely typical; while the judicial precepts are adapted to circumstances of time and place, to national character, and to a particular form of Theocratic government; all of which were transitory in their

¹ Deut. xxi. 18—21.

² Exod. xxi. 28.

nature. It does not, therefore, surprise us to find, that another and final law was given by Divine Revelation in the new dispensation of grace; and, as was fitting, its mode of promulgation was so much the more glorious, by how much it exceeded the old law in dignity of nature and completeness of development. Accordingly, while the latter was announced to the chosen people "*by the disposition of angels*;"¹ the new Law was announced to the whole world by the Incarnate God. Similarly excelling was it in substance. Shadows, figures, types, have passed away; behold all things are made new. For the great Antitype has come on earth in the fulness of His Might and Wisdom, and His law is *indeed* the law of Truth. The Levitical code, though a Divine development of the natural law, was temporarily appointed as a schoolmaster to lead us to Christ. But the Christian law is the perfect development of the Levitical. Wherefore S. Chrysostom,² accommodating to his train of thought at the time the words of the Holy Gospel, beautifully compares these three laws,—the natural, Sinaitic, Christian,—in their respective order of succession, to the blade, the ear, and the full corn in the ear. As this great Doctor, then, of the Eastern Church would have us to understand, the Evangelical law was contained in the Sinaitic, as the perfect and developed in the imperfect and germinal.

The Evangelical law

Accordingly the Evangelical law bears about it the characteristics of its excelling greatness. It is a law of internal life rather than of external precept. It "is principally the grace of the Holy Ghost which is given by the faith of Christ,"³ and concerns itself with that which disposes to grace, and with matters appertaining to its proper use, as subjects that are secondary in their nature. For a like reason it is called "a law of faith, and a law of grace;" because it is occupied with the great articles of the Creed and with the institution of the Sacraments of grace, leaving the determination of ceremonial and judicial precepts to those Prelates whom the Divine Legislator had appointed partly for this

Its characteristic excellence.

¹ Acts vii. 53.

² Quoted by S. Thomas, 1. 2æ. cvii. 3. in c.

³ D. Thom., 1. 2æ. cvi. i. in c.

purpose.¹ For what regards the natural law, the legislation of Christ developed it in two ways. He extended its obligation by bringing it especially to bear on the inner thoughts and motions of the heart; and He so elevated it into a supernatural order as partially to change the rank and multiply the number of its virtues, while He added that new order of heroic virtues which is embodied in the Evangelical counsels.

It is principally spiritual and internal;

By virtue of these characteristics it rises to a high elevation, and assumes an incomparably nobler form than its provisional predecessor. It is permanently a law of liberty, as S. James calls it,² because a law of grace, which gives to its subjects the capacity of carrying out its provisions; whereas the old law was a bondage. The latter was almost entirely occupied with the regulation of external actions, and did not extend to those actions which are purely internal. To adopt the words of the Angelic Doctor, "It was said to restrain the hands, but not the mind."³ To this end, it was necessary to burden those who were subject to its authority with a multiplicity of ceremonial and judicial precepts, which constituted a formal, written code. The Evangelical law, on the other hand, charges itself with the loftier office of regulating the internal motions of the soul by means of a new supernatural life within it, and enjoins no external acts, save those which are connected with the sacraments, or are necessary to the life of grace; neither does it forbid anything that is not incompatible with such life.

is not primarily a written law; but an inner legislation of grace,

It follows from all this that the Evangelical law, in striking contrast to the Levitical, "*is written*," to borrow the words of S. Paul, "*not with ink, but with the Spirit of the living God; not in tables of stone, but in fleshy tables of the heart.*"⁴ It therefore needs no Scriptures; for by virtue of the gift of the indwelling Spirit, each Christian becomes "*the Epistle of Christ.*"⁵ Accordingly, the books of the New Testament, as

¹ D. Thom., Quol. Q. iv. a. 18; cf. 1. 2æ. cviii. 2. o.

² S. James ii. 12.

³ Lex vetus manum et non animum cohibere dicebatur.—In 3. d. xl. a. 2. o.

⁴ Vide D. Thomam, 2æ. xlii. 4. ad 2.

⁵ 2 Cor. iii. 3.

handed down to us, were not written by the Divine Legislator Himself; neither are they formal, methodical, or statutory, after the manner of the Pentateuch. They have no appearance of a law about them, but are, so to speak, parenthetical, are partly biographical, partly hortatory, partly doctrinal; and were written mostly to meet a present need.

In a word, the one law guides from without by commandment, the other from within by an inhabitation of grace. The former, therefore, required a formally written code; the latter, considered as formally distinct from the old Law, contents itself with the voice of the Blessed Spirit, for all that concerns the direction of the soul in justice.

It is, nevertheless, true that men had need of instruction, even under the Christian economy. They required to be taught what was necessary as a proper disposition for the reception of grace, all that was connected with the right use of it, when received, and the principal mysteries of faith; but this office was committed in the main to a succession of living teachers. Such matters, however, do not come under the notion of law, properly so called, though intimately connected with it in its practical bearings. The new Law, then, is primarily a law implanted in the soul; whereas its documentary legislation, if such it may be called, is altogether secondary.¹

yet in a
secondary
way is also
partly writ-
ten.

¹ *Habet tamen lex nova quædam sicut dispositiva ad gratiam Spiritus Sancti, et ad usum hujus gratiæ pertinentia, quæ sunt quasi secundaria in lege nova, de quibus oportuit instrui fideles Christi et verbis et scriptis, circa credenda quam circa agenda. Et ideo dicendum est, quod principaliter lex nova est lex indita, secundario autem est lex scripta.*—D. Thom., 1. 2æ. cvi. 1. o; cf. ibidem, cviii. 1. 3. ad 3.

CHAPTER II.

HAS THE MOSAIC LAW ANY OBLIGATORY FORCE IN THE KINGDOM OF CHRIST ?

HAVING concluded our examination into the nature and divisions of Divine law, we are now in a condition to confront a question, which is not only of vital interest in itself and by reason of its general controversial bearings, but has an especial claim on our attention, because of its intimate connection with the particular subject of Dr. Pusey's first Papal contradiction. The question is this; to what extent has the law of Mount Sinai been superseded by the law of grace? Does the old Law either wholly, or partially, bind us as Christians?

A partial abrogation of the Mosaic law universally admitted by Christians;

evident from the Scriptures.

That we have been, partly at least, liberated from its bondage, no Christian, whatever may be the denomination to which he belongs, would venture to deny; for it is most distinctly and repeatedly affirmed in the Apostolic Epistles. In fact, the whole intention of S. Paul's Epistle to the Galatians is directed to the establishment of this truth. The argument may be summed up in the words of that Apostle, "*Therefore, brethren, we are not the children of the bondwoman, but of the free; by the freedom wherewith Christ hath made us free. . . . Stand firm, and be not held again under the yoke of bondage. . . . Christ is become of no effect to you, whosoever of you are justified by the law: you are fallen from grace.*"¹ There can, then, be no doubt as to the partial abrogation of the Sinaitic code. It only remains for us to determine how far this abrogation extends.

1. The ceremonial precepts abolished.

We begin, therefore, by laying it down as an indubitable fact, that the whole of the ceremonial precepts of the old Law

¹ Gal. iv. 31; v. 1, 4.

have been annulled. It is true that, in the early history of the Church, there were not wanting heresies whose system of error was reared upon the denial of this proposition ; but in the present day it would be difficult to find any one, professing the faith of Christ, who would hesitate to admit its truth. The proofs, direct as well as indirect, from various books of the New Testament,—to say nothing of the Old,—are too explicit to leave even the shadow of a doubt on the mind of any reasonable man. The Apostle of the Gentiles, therefore, shall conclude the question for us in his own definite words : “ *Let no man therefore judge you in meat, or in drink, or in respect of a festival day, or of the new moon, or of the sabbaths, which are a shadow of things to come ; but the body is of Christ.*”¹

There remain, however, two difficulties connected with this part of the subject, which we are unwilling to pass over in silence.

Two difficulties.

The first concerns the observance of the Sabbath as prescribed in the third commandment of the Decalogue.

i. The observance of the Sabbath day.

It is a fact worthy of our most attentive consideration, and pointed out long ago by writers of eminence, that Protestantism, so far as it may be regarded in the light of a positive religious system, is ever tending to Judaize Christianity. The reader would probably be astonished at the variety and number of proofs of this statement which could be produced, were it to our present purpose to produce them. But nothing serves more clearly to manifest this tendency, than its theory and practice with respect to the observation of what, in Jewish phrase, it is pleased to term the Sabbath. This very transfer of the name to the Christian Sunday,—the prevailing ignorance concerning the true object of our weekly commemoration,—the adoption and strict maintenance of most of the special Mosaic laws by which, according to Protestant Theology, its observance is to be regulated,—the horror evinced at the *true* Catholic observance of the Sunday festival,²—

Protestant superstition concerning it.

¹ Coloss. ii. 16, 17.

² The author must not be supposed to countenance in any way the gross violations of the Church's rule, which are, alas ! too common in some Catholic countries, and which Her Prelates have endeavoured, with but partial success, to arrest.

conspire to evince the popular belief, that S. Paul is mistaken when he tells us that Christians must not be judged "*in respect of Sabbaths.*"

Seeming reason in favour of this superstition.

And, at first sight, it would seem as though there were some show of reason for this opinion. For it is a commandment contained in the Decalogue, which is acknowledged by all Christian Theologians to contain within itself the first principles of the natural law, confirmed by a Divine and supernatural Revelation. So universal is this impression, that not the Catholic Church only, but Protestant communions likewise, have inserted the Decalogue in their respective catechisms, or at least used it in their catechetical teaching, as the one acknowledged standard of their moral education. Nor has this particular commandment been expunged from Catholic, any more than from Protestant formularies. Yet surely it is a ceremonial precept, though written in the tables of commandment. It is not true, then, that all the ceremonial precepts of the old law have been annulled, since we have here a signal exception. Such is the objection.

Answer to the objection.

In our answer to the difficulty we shall do little more than set before the reader the profound teaching of S. Thomas¹ on the subject, which he has, as usual, exhausted.

We begin, then, by laying down, as the main basis of our argument, that this commandment is partly moral, partly judicial, and partly ceremonial.

Let us look for one moment at the object of its first institution. The seventh day was consecrated to God in the Jewish commonwealth, because, on the seventh day, God rested from His work of creation. Now it is sufficiently evident that rest from work cannot be predicated univocally of the Creator and the creature. Yet our ideas of God's rest are necessarily gathered from the ideas we have formed of rest in created things; so that with this latter we must begin.

Notion of rest;

Rest, when predicated of the creature, admits of a four-fold signification. In its primary meaning it is opposed to motion. But, inasmuch as motion, in human operations, causes labour according to Aristotle, rest is in the second

¹ In 2. d. xv. q. 3. a. 2. o.

place opposed to labour or toil. From these two principal or native meanings of the word are derived other two. For, seeing that motion attaches to human operations, it has become a sort of custom to call all operation, of whatever kind, motion; and in like manner any cessation from operation is called rest. This is the third meaning of the term, transferred from the first. Finally, as nothing labours save for the reason that it has not as yet attained the perfection of its nature, hence it comes to pass that a creature is said to be at rest there, where it has found its sufficiency and beatitude; as, for instance, the will of man rests in its ultimate end. This is the fourth meaning of the word transferred, as is plain, from the second.

Now it is sufficiently obvious that rest cannot be predicated of God, according to the first or second of these meanings, in any way whatsoever; while it admits of being applied to Him in the third and fourth of the senses enumerated, provided that we purify them from all admixture of imperfection. We may therefore say that God rests, or ceases from His operation; not, however, as though His own operation by which He is said to work, ceases. How could that be, since His operation is His essential Being? But the expression is justly used in reference to the effect, because, by an operation eternal in itself, He causes that a certain effect should be created and consummated in time. Yet, even as regards the effect, His operation is not said to have ceased on the seventh day in such sort, as though He did nothing afterwards, in particular on the seventh day, in things created. For if He were for one moment to suspend His active operation in the creation, creation would cease to be, as S. Austin justly remarks.¹ But God is said to have rested from His work on the seventh day, because from that epoch forward He made no new creature which He had not somehow, seminally at least, created among the works of the six days or eons of time. So in like manner, for what regards the last meaning, the rest of the Divine Will in the fruition of Its end may be understood in two ways; either *absolutely*, inasmuch as He is all-sufficient to Himself, and thus His rest is eternal: or *rela-*

as applied
God.

De Genes. ad literam, iv. 12. n. 22.

tively to the creature, in proportion as the creature is pleasing to Him. But here again the idea needs due purification to enable us to predicate it truly of God. For we must be on our guard against supposing that God has need of His work, as though He found in it aught that could affect His unchanging Beatitude. The exact reverse is the truth. For, willing to constitute the creature in its essential order and relation to Himself, in Himself He finds an all-sufficiency. In such wise God is properly said to rest from the work of creation. But this supposes that the things have been already made, that is, in other words, that the six days are over. So the rest of God is appropriately ascribed to the seventh day according to each of the last two meanings of that term.

God's Sabbath.

Two things, then, there are which are specially attributed to the seventh day, and are enumerated in the commandment as reasons for its observance. On that day God finished the work of creation. All the typical forms of animate and inanimate nature which, in the all-excelling Freedom of His Will, He had determined to create, had been sown in the vast field of matter. Those prototypal ideas of His infinite Wisdom, which conceive and measure the innumerable degrees and orders of the imitability of His own wondrous Being, had been realized to the extent that He had decreed in the eternal counsels of His Love. The genesis was now complete; and He rested.¹

Yet again, He blessed the seventh day. For then, when the plan was executed, He, as it were, drew up all His fair creation to Himself, and made the whole well-ordered cosmogony,—not by a separate act, but by the fact of creation itself, through the innate tendency of natural operation—converge towards Himself as its final Rest,—the Omega of its development and perfection, as He was the Alpha of its being and existence. He sanctified the seventh day. For the Supreme Will of God rested then, not in His creatures,—seeing that they could add nothing to His Beatitude, Who in the ocean of His own infinite Perfections finds from everlasting fullest satisfaction,—but in Himself, as in the one necessary, all-sufficing End of that which He had created.

¹ See *S. Hilary*, Comment. on Psalm xci. particularly nn. 3, 7, 8.

God therefore blessed the seventh day for His people, that on that day He might be blessed by them for the exuberance of gifts bestowed throughout creation, and for the universal order by which all things are made to circle round Himself and to converge towards Him. He sanctified or hallowed it, that they might also rest from their labours,—a rest principally such as He, their Creator, rested, by elevating themselves above the creatures and their own petty interests of daily life, in order that they might repose in Him, in Whom alone the intellect and will of man can find rest.¹

The Jewish Sabbath : reason of institution

There were, in addition, three mystical reasons, as the Angelic Doctor² teaches us, for the institution of the Jewish Sabbath. One was allegorical or typical in its nature ; for the Sabbath was intended to prefigure the rest of Christ in the sepulchre. The second was moral ; for that Sabbatical rest signified the necessary rest of the human soul from sin, and from all that could interfere with the attainment of repose in its God. The last was anagogical ; forasmuch as that day of commandment foreshadowed the eternal repose of the Blessed, when they shall for ever rest from their labours in the bosom of their Father.

Three of the mystical reasons for its institution.

From the survey thus made of the reasons for which the third commandment was given to the children of Israel, we can plainly perceive that it partially embodies a first principle of the natural or eternal law of God. For it is a dictate of nature,—acknowledged by the universal conscience in all ages, and expressed in the general establishment of religious festivals among the nations of the earth,—that a certain portion of time in the life of man should be set apart for offices of religion. Together with the certain knowledge of an existing God there is implanted, as it were, in the soul of every man a resistless conviction that it is his bounden duty to offer to the great Creator the homage of his worship,—a public and external acknowledgment of His supreme domination. This is a first principle of Ethics, which is as incapable of change, as is the order and transcendental relation of the creature to its Creator. *So far*, therefore, the third com-

The more principle the third commandment, which is immutable.

¹ Cf. D. Thom. 2. d. xv. q. 3. a. 3. o.

² 3. d. xxxvii. Q. unica, a. 5. q. 1. o ; cf. 1. 2æ. c. 5. ad 2 ; 2. 2æ. cxxii. 4. ad 1.

mandment of the Decalogue is immutable, and has a sanction and authority which, as they long antedated Levitical institutions and the legislation of Mount Sinai, will, in like manner, eternally survive their abolition.

A physical reason for its institution, still of force.

Under the same category, only in a far lower order, must be placed that dictate of nature, which claims for human weakness occasional intermission of physical labour. The experience of ages has stereotyped the truth of this claim on the pages of human legislation; and whenever a temporary fanaticism, as in the first French revolution, has attempted to ignore it, nature has vindicated her own cause by the peremptory evidence of results. Here, in this country, the old *ferial* Festivals of the Church, had, with one exception, been long blotted out of the statute-books; and the result has been, not only that Good Friday has been painfully metamorphosed into a Feast, but the State has been compelled to add national holidays of its own devising to meet the need. This natural want of human life will last as long as man is subject to toil and fatigue;—that is, till the volume of time is closed, and the fires of judgment inaugurate the universal regeneration. It has, therefore, survived the extinction of the old law.

The institution of the Sabbath, considered as a judicial precept, is void now. a. as regards the object of commemoration.

But this precept of the Decalogue is also in part judicial. For, as it stands, it is an application of the general principle just enunciated to the peculiar religious economy, natural dispositions, and political position of the chosen people. The Jewish Sabbath was the weekly commemoration of the first Theophany, or of the Revelation of Himself by God to man in the works of His creating love. But the institution of this special commemoration is in no wise contained within the circumference of the natural law; and accordingly when, in the course of history, another supernatural and far more glorious Theophany was granted to man, it is not surprising that the memory of the former should have given place to the memory of the latter. It is still a day of rest,—commemorating rest. But it no longer reminds us of Divine rest in creation; since that is, as it were, absorbed in the idea of Divine rest in re-creation,—the perfection of the new Theophany. For it now celebrates the repose of the sacred

What follows? Why, that this eminently favoured witness of Dr. Pusey, on whose supposed authority we are to believe that the Council of Trent decreed false decrees and the Catholic Church has been teaching error for above three centuries, himself sanctions an open violation, on Dr. Pusey's showing, of the eternal and immutable law; and gives a dispensation, where Theologians of great name maintain that God Himself cannot do it, on the strength of a mere judicial precept that was originally limited to Israel, formed part of its municipal law, is long ago dead and buried, and can never be revived! The simple fact is, that the question of the *validity* of the marriages referred to seems never to have presented itself to the Pontiff's mind; certainly the Decretal is solely occupied with points of continued cohabitation in the avowed character of man and wife.

visible ex-
nation
en by
nzales.

Meanwhile, how is the difficulty to be explained? We will give the reader what seems to be the least improbable surmise, in the words of its author. Gonzalez, then, commenting upon the passage, makes the following remark: "It is true that this marriage in the first degree" (of affinity) "in the transversal line is not prohibited by the natural law: still there was need of this dispensation which Innocent granted the Livonians on their conversion to the faith, in order that they might continue to live with their wives, in the case of their having contracted marriages of this kind while they were yet pagans; that thus they might avoid the scandal that might be occasioned among other of the faithful, when they saw men, who had successively married two sisters, continuing to live with their wives just as before." This explains, it is true, the nature and motive of the dispensation; but why that special proviso? The same writer goes on to remark that it was inserted, "because that plea, which made a like marriage permissible, nay, a duty, under the old law, would seem to excuse them from what would otherwise be a very gross impropriety. For though this marriage is not made void by the natural law, nevertheless the contract would not be a right and proper one in itself without some special reason; and therefore the Pontiff requires a plea or reason for giving the Livonians, in the present instance, a dispensa-

*things give thanks,"*¹ transforming our daily life and labours into prayer, we have no need of that servile Sabbath which was prescribed before the advent of the Redeemer; and hence those observances, which were meritorious acts of obedience under Moses, have become superstitious under Christ.² The Jewish Sabbath is no more; and the Catholic Church has embodied the requirements of the natural law in her weekly festival, commemorating a higher mystery of Divine Love in a far nobler order,—the triumph of our fallen nature in her risen Head,—as well as in those other Feasts of obligation, dedicated to the memory of the other principal mysteries of our most holy faith.

The institution of the Sabbath as a ceremonial precept is void now.

Once more. The third commandment was partly *ceremonial*; and so far as it was ceremonial, "it prefigured the rest of Christ in the sepulchre, and consequently that rest which we have through Him; *for we are buried together with Him by baptism unto death.* (Rom. vi. 4.) Wherefore on the advent of the truth, the figure ceased."³ With the cessation of the figure the law also became void, so far as it was ceremonial in its nature.

Summary of the argument.

To sum up, then, what has been concluded in relation to this most interesting subject, we reply as follows to the difficulty proposed. The third commandment assumes the form partly of a ceremonial, partly of a judicial precept, and is in part a simple dictate of the natural law. The peculiar institution of the Jewish Sabbath, *as such*, was a ceremonial and judicial precept both as regards its object of commemoration and prescribed rules of observance; and has been done away in the dispensation of grace. But it embodies also a principle of the natural or eternal law, which has secured it

¹ 1 Thess. v. 17, 18.

² Cf. D. Thom. 2. 2æ, cxxii. 4; et 3. d. xxxvii. Q. unica, a. 5. qq. 2, 3.

"Observatio Dominicæ non obligat ex præcepto Decalogi, nisi quantum ad hoc quod est de dictamine legis naturæ."—Ibidem, 3. ad 3m. "Neque oportet quod ab omnibus in die Dominica cessemus a quibus in die Sabbati cessabant; quia antiquorum cessatio ab omnibus operibus servilibus in significationem erat; non autem nostra cessatio."—Ibidem, ad 4m.

³ "Observatio Sabbati, in quantum cæremonialis est, signat principaliter requiem Christi in sepulchro, et per consequens requiem quam habemus per Ipsum; consepulti cum Eo per baptismum in mortem. Unde veniente Veritate, figura cessavit."—D. Thom. in 3. d. xxxvii. Q. unica, a. 5. q. 3. ad 1m.

a place in the Decalogue. So far as this it is immutable; and it is for this reason alone that it has retained its place in the catechisms of the Church.

The second difficulty that has been urged against the total abolition of the ceremonial precepts contained in the Levitical code, is derived from the fact that the obligation of paying tithes to the priest continues under the Christian dispensation. Yet, as we are told, this precept is ceremonial. Therefore the ceremonial law of Moses has not been entirely abolished.

ii. The second difficulty; the obligation pay tithes

The answer is simple. We must however object, *ab initio*, to the classification. For though the precept in question may be partly ceremonial, it is principally judicial. However, waving this point,—seeing that the difficulty would only be postponed, not solved by urging it,—we make reply that this law was abrogated with the rest; but the Church of Christ took it, as She took many other portions of the Sinaitic code, as a model for Her own political legislation, and re-established it in the Christian Commonwealth under the form of an Ecclesiastical Canon, after it had ceased to be binding as a Divine commandment. She might have appointed, as S. Thomas says, an eighth or a twelfth part to be thus dedicated, had she so pleased; but she preferred to adopt the Divine measure already prescribed in the Levitical law.¹

The answer. In the Church of Christ it is an Ecclesiastical law.

We have at length established the fact that all the ceremonial precepts of Mount Sinai have been abolished for ever; must we say the same of the judicial precepts? or, on the contrary, do all,—or at least some of them,—claim an authority over the Christian conscience by virtue of their original promulgation? We unhesitatingly reply with Suarez² (who defends it as a certain opinion), and with the Angel of the Schools³ *passim*, that these precepts are now dead, and do not of themselves, or by virtue of their primitive institution,

II. The judicial precepts are abrogated in the Christian economy.

¹ Quol. ii. a. 8. o; 2. 2æ. lxxxvii. 1. o. Suarez de Legg., l. ix. c. 11. n. 1.

² Ibidem, n. 3.

³ 1. 2æ. civ. 3. o; cviii. 2. o; 2. 2æ. lxii. 3. ad 1m.; lxxxvii. 1. o. Quol. ii. 8. o; iv. 13. o; 3. d. xxxvii. q. 1. a. 1. ad 2m.; a. 5. qq. 2. 3; 4. d. ii. Q. 1. a. 4. q. 1. ad 2m. &c. &c.

Proofs from
Scripture,

oblige the consciences of any, whether Pagan, Jew, or Christian. This is plainly enough the teaching of S. Paul. In his Epistle to the Hebrews he is occupied in proving to his countrymen that the eternal priesthood of Christ has superseded, by its intrinsic excellence and anterior institution in the typical Melchisedech, the temporary priesthood of Levi; and he thus proceeds, by a parity of reasoning, to convince them of the total cessation of the old law. "If then perfection were by the Levitical priesthood, (for under it the people received the law), what further need was there that another priest should rise according to the order of Melchisedech, and not be called according to the order of Aaron? For the priesthood being translated, it is necessary that a translation also be made of the law There is indeed an abrogation of the former commandment, for the weakness and unprofitableness thereof. For the law brought nothing to perfection, but an introduction of a better hope."¹

S. Paul's argument in this passage is the reply to a supposed objection of his Jewish disputant, who might urge his difficulty after this fashion. "Well, let us concede for the moment that Christ has introduced a new priesthood after the order of Melchisedech according to the prophecy of the Psalmist, it does not therefore follow that He should introduce a new law, to the abrogation of that which has been given us by God." In answer to such an argument the Apostle urges that the translation of the priesthood necessarily involves the transfer of the law; because the law, so far as it is positive, is indissolubly connected with the priesthood, and is proportioned to it. Statutes, precepts, ceremonial enactments, rewards, and punishments, are the necessary concomitants of a hierarchical, as of any other polity; and are modified and shaped to its measure. Accordingly, the maintenance of the same, after the substitution of one priesthood for another, would be incongruous. Besides, if the immediate and formal end be changed, the means suited to that particular end must be changed in like manner. But the positive law of Moses, including the judicial precepts, was a system of jurisprudence Divinely instituted for the preservation of that Theocracy, of

¹ Hebrews vii. 11, 12, 18, 19.

which the Levitical priesthood was the principal symbol and partial expression; therefore on the suppression of the Jewish Theocracy and of its priesthood, the law that supported it is annulled. If the Jew once more proceeds to inquire, why God should change a law that has been instituted by Himself, —why there should be this setting aside of the former commandment, the Apostle replies, that it was because of its weakness and unprofitableness, which are a sufficient proof that the all-wise Legislator did not intend it to be permanent. It could not of itself expiate sin, or save those who were the subjects of its authority. "It brought nothing to perfection"; for it was mainly occupied with things external, and with a mere outward and legal purification which was but a type of better things to come. S. Paul, therefore, in his Epistle to the Galatians, calls its positive precepts "weak and poor elements."¹ They were designed to be provisional only, educational, preparatory; "for the bringing in of a better hope."

The Apostle sets this same truth before us under another form in his Epistle to the Romans, where he thus appeals to the Jewish converts: "Know you not, brethren, (for I speak to them that know the law,) how the law hath dominion over a man, as long as it liveth? For the woman that hath a husband, whilst her husband liveth, is bound to the law. But if her husband be dead, she is loosed from the law of her husband. Wherefore, whilst her husband liveth, she shall be called an adulteress, if she be with another man; but if her husband be dead, she is free from the law of her husband; so that she is not an adulteress if she be with another man. Therefore, my brethren, you also are become dead to the law by the body of Christ: that you may belong to another, who is risen again from the dead, that we may bring forth fruit to God."²

¹ Gal. iv. 9.

² Rom. vii. 1—4. It will be useful perhaps, for a clearer understanding of this passage, to subjoin the following notes:—

1o. The Rheims, or authorized English version, which we have quoted, follows Origen and S. Ambrose in understanding the subject of the former clause of the sentence in the first verse as the subject also of the second clause, *ἐφ' ὅσον χρόνον ζῇ*. The translation therefore runs thus; *as long as it* (i. e. ὁ νόμος—the law) *liveth*. S. Chrysostom and S. Austin take *man*—the

The argument of the Apostle is analogical, and may be briefly expressed as follows. The Jewish nation had been wedded to the Mosaic law as to a husband. So long, therefore, as that law was alive, she was bound to subjection and obedience; otherwise she would be an adulteress. But now that, through the sufferings of the Divine Redeemer, the Mosaic law—her former husband—is dead, she is freed from further obedience to it, because the marriage is dissolved by the death of the husband. She is no longer, therefore, an adulteress, if she marry another. The Jewish people, then, are invited to contract new espousals, and to accept a new husband,—even Him Who is risen from the dead and His new law of life,—that they may be fruitful in offspring of grace.

The Apostle, in both these passages, is evidently considering the Sinaitic law as a whole. It is true that, in his Epistle to the Hebrews, for obvious reasons, the main force of his argument is directed to the question of ceremonial precepts;

τοῦ ἀνθρώπου of the preceding clause—to be the subject. The Protestant version has followed their authority, and renders the phrase thus: *as long as he liveth*. The argument of the Apostle comes to the same either way. But the former is the more natural construction; and has the additional advantage of adding considerably to the clearness of the Apostle's argument.

20. In the second verse the Greek text runs thus: ἡ γὰρ ἑκαστοῦ γυνὴ τῷ ζώντι ἀνδρὶ διδεται νόμῳ; it would seem, therefore, more natural to translate the phrase as follows: *for the woman married to a husband is bound by law to that husband while he is alive*. Such a rendering gives additional preciseness to the analogy. It is so rendered in the Syriac version; and is adopted by Tertullian, Erasmus, and others.

30. In the same verse the concluding words are thus given in the Greek: κατήργηται ἀπὸ τοῦ νόμου τοῦ ἀνδρός. Some have taken the last two words—τοῦ ἀνδρός—as though they stood in apposition with τοῦ νόμου; and translate it, *she is loosed from the law, her husband*. If this were the Apostle's meaning, he would thus clearly keep distinct, in the minds of those to whom he was writing, the principal of the two analogates.

Assuming the justice of these three renderings, the earlier portions of this passage would be expressed in some such way as this: "Know you not, brethren (for I speak to them that know the law,) that the law hath dominion over a man, as long as that law is, so to say, alive. Just as the woman that is married to a man, is bound to her husband, so long as he is alive, by law; but if her husband is dead, she is loosed from the law,—loosed from her husband. For you must remember that in this my argument, the old law is the husband to whom I suppose you to have been married."

40. The phrase, "*you also are become dead to the law*," in the fourth verse, is a hypallage for "*the law has become dead to you*."

yet the principle asserted in the given quotation, on which the whole argument is built, is evidently universal; whereas in the second passage, taken from his Epistle to the Hebrews, while, as in the preceding instance, the same principle is unequivocally asserted without any limitations, the particular application covers wider ground than that of positive law, and lands us beyond the present subject of inquiry.

The above argument acquires a special strength, when applied to the preceding classes of precepts. For those which are ceremonial or judicial have this in common, that both, as we have had occasion to remark before, are merely positive laws;—both, the temporary application of certain principles embodied in the natural law, to the particular condition, national character, or form of government, which characterizes an isolated people. They are, therefore, alike transitory, provisional; and the same causes that militate against the permanence of the one, must also affect with equal force the permanence of the other. They stand or fall together. Any admission, in consequence, of the abrogation of the ceremonial, legitimately includes a like admission, as touching the judicial precepts.¹

Proofs fr
reason.
a. They v
temporal
applicati
of a mor
principle

However, there is no longer any room for doubt about the repeal of these latter; for that repeal is sanctioned by the authority of our Lord Himself, as revealed to us both in His Sermon on the Mount and elsewhere. Further, it is worthy of remark that, in one instance, viz. that of divorce, He condescends to assign a reason for the repeal, which tallies with the canon that we have given already. These are His words: "Moses, because of the hardness of your hearts, permitted you to put away your wives; but from the beginning it was not so";² showing thereby with sufficient plainness that this judicial precept was framed expressly to suit the moral complexion of the Hebrew people, while attention is at the same time directed to an anterior law of weightier and more general sanction.

b. repea
as such,
Christ.

Once more: The judicial precepts were imposed by God on the children of Israel, in order to form them into, and pre-

With th
dissolut
of the J
Theocr

¹ Vide S. Ambros. Epp. Class. II. epp. lxxii—lxxiv.

² S. Matt. xix. 8.

they are
useless.

serve them in the shape of a Theocracy, isolated from surrounding nations and entirely self-contained. But after the advent of the Messiah, they ceased to be a peculiar people in the Divine counsels. Their political and religious *status* was at an end;—their mission, as a provisional Theocracy, fulfilled. The Mosaic commonwealth had to make way for that Divine Empire, which was destined, without distinction of race, to include within its world-wide circumference all the tongues, peoples, and tribes of the earth. Consequently the judicial precepts of the old law had no longer any sphere of operation,—not among the Gentiles, for they had never been subjected to their authority,—not among the Jews, because their privileges were gone, their Divinely-appointed polity had become a thing of the past, and they had ceased to occupy their distinctive place as guardians of the Divine oracles and the chosen champions of Monotheism.

It must, therefore, be admitted that the judicial statutes of the old law have, of themselves, no authority under the new dispensation of grace.

III. The
moral pre-
cepts are
abrogated
under the
Christian
economy.

There now remains one further question,—the most momentous and most disputed of all,—which it behoves us to resolve, in order to complete this our preliminary investigation. It may be asked, then, whether the moral precepts in the Sinaitic code, which are principally contained in the Decalogue, are abrogated along with those which are ceremonial and judicial, or whether, on the contrary, they retain precisely the same sanction under the Christian, as under the Jewish economy.

The Word of
God, written
and unwrit-
ten, appa-
rently ad-
verse to this
conclusion.

The answer seems simple enough at first sight; for we find in the New Testament that the ten commandments are not unfrequently quoted by Christ and His Apostles,¹ as though they had a like authority over the conscience of the Christian to that which they had over the conscience of the Jew. It is true that our Blessed Lord extends the sphere of their obligation by applying them to the internal act; yet they form His text. And as if to exclude all possibility of

¹ S. Mark x. 17-20; S. Matt. v. 21-27; xxii. 35-40, compared with S. Mark xii. 28-34; Eph. vi. 1-3; S. James ii. 8-12, &c. &c.

reasonable doubt, He expressly warns His disciples against the opposite conclusion in the following remarkable words : "Think not that I am come to destroy the law or the prophets ; I am not come to destroy, but to fulfil."¹ Then S. James speaks of these moral precepts² as "the royal law according to the Scriptures," and enforces their observance on the faithful ; while S. Paul quotes one of them, even with the promise of temporal reward attached to it, and prescribes its observance as an undeniable law of Christian duty.³ The Fathers, again, speak universally in the same sense. They appeal to the Decalogue, and have the air of claiming for it the same authority, the same obligatory force now, as it had under the Levitical dispensation. Therefore, the Word of God, written and unwritten alike, precludes all possibility of doubt, and confirms by its infallible voice, the perpetual sanction of this, the most important portion of the Sinaitic legislation.

There is one point of this interesting question, upon which all are agreed. No one, it is to be hoped, will deny the universal and perpetual obligation of these commandments, so far as they are the simple expression of the natural law, and offer themselves to the human conscience with the sanction of its immutable authority.

One point certain ; the moral law is of eternal obligation.

But there is another point that is far more difficult of solution. It has been copiously discussed by Theologians of the School ; and of the post-Tridentine Scholastics Vasquez maintains one opinion ; Suarez, its opposite. The question is this : Are the moral precepts, properly so called, which had already received the universal and eternal sanction of the natural law, invested with a fresh sanction and a fresh authority, so far as Christians are concerned, by virtue of their

The question is concerning the permanence of the special Sinaitic sanction.

¹ S. Matt. v. 17.

² The phrase, *moral precepts*, is slightly ambiguous ; as it has been used by theologians, and S. Thomas in particular, in at least two senses. For all precepts may be called moral, which direct the individual, social, or political action of man. In this sense of the word, the *judicial* precepts, as distinguished from the *ceremonial*, are moral, although they are only positive laws. But for a reason too obvious to mention, the precepts of the eternal or natural law are called moral precepts *autonomastically*. Dr. Pusey has confounded these two meanings of the phrase, as we shall see in the sequel.

³ Eph. vi. 1-3.

Divine promulgation on Mount Sinai? It can scarcely be doubted that, in the instance of the Jews, these precepts acquired thereby a distinct obligatory power. Does this continue in the Church of Christ? or has it been annulled together with the whole dispensation from which it sprung? Of course, if these moral precepts were merely *declarative* of the natural law, and not also *preceptive* (as some have maintained,) the question would be at rest; for the Decalogue would then simply assume the form of Divine teaching, and would, in consequence, impose no new obligation, even on the conscience of the Jew. But we assume, in accordance with the common opinion, that it was distinctly preceptive; and, if so, the question is, whether this distinct sanction, Divinely given under the old law, has survived the abolition of the Sinaitic code, or whether it died with Christ upon the cross.

Resolution
of the ques-
tion.

Reasons in
favour of its
abrogation:
i. The pro-
mulgation
was to Jews
only.

We agree with Suarez¹ in holding that such sanction no longer remains,—that it was annulled together with the sanction given to the ceremonial and judicial precepts,—and that, consequently, under the Gospel, our only obligation is to the eternal, or natural law, as such. The Doctor just named gives as one principal reason for this opinion, that the Decalogue, like the rest of the Sinaitic legislation, was revealed exclusively to the Jews, if we are to judge from the introductory words, “I am the Lord, thy God, who brought thee out of the land of Egypt, out of the house of bondage.”² The cogency of this argument is universally admitted when it is a question of the ceremonial and judicial precepts; why then should it cease to have any weight, when applied to those moral precepts with which, nevertheless, the words quoted are much more plainly and immediately connected?

ii. The De-
calogue not
entirely
composed of
moral pre-
cepts, yet
the sanction
common to
it, as a
whole.

This reasoning receives further confirmation, if we examine into the constituent parts of the Decalogue. For there are two commandments, one of which is certainly a judicial precept, and has been therefore abrogated with the others of the same class, as those who maintain the opposite opinion are free to confess; while the second is probably also judicial,³ and, if so,

¹ De Legg. ix. c. 11, nn. 22 et seq.

² Exodus xx. 2.

³ Suarez, in the place cited, speaks of this opinion, which considers the latter portion of the first commandment to be a judicial precept, as a *probabilis*

has consequently shared the same fate. The first of these is the third commandment, which imposes the observance of the Sabbath. The other is that part of the first commandment that forbids the Jew to make to himself "a graven thing, or the likeness of anything that is in heaven above, or in the earth beneath, or of those things that are in the waters under the earth."¹ Now, if the Decalogue binds us as a whole and by virtue of its own peculiar sanction, it must bind us in all its parts. We are therefore, as Christians, bound to the observance of the Jewish Sabbath, from which, nevertheless, according to the concurrent testimony of the Fathers, we are free. We are also bound to the literal observance of that portion of the first commandment which forbids the manufacture or use of images; yet both have been authorized by the infallible decree of an Ecumenical Council.

Another argument in favour of this opinion is based upon the fact that the Decalogue, as such, had no jurisdiction over the conscience of the Gentile previous to the Incarnation; therefore, *à fortiori*, it does not bind us who are under the law of grace. The antecedent is evident from the testimony of S. Paul, who declares that "the Gentiles who have not the law" (that is of Moses) "do by nature those things that are of the law," when they act rightly, and are consequently "a law unto themselves,"² because their own conscience reveals the law to them; which plainly means, in other words, that they were exempt from any special obligation to the law written on tables of stone, but were subject to that anterior, fundamental law, written in their hearts, *i. e.* the natural and eternal law. It is confirmed, moreover, by the express authority of S. Thomas,³ and is based on the great principle of jurisprudence that "*Lex non promulgata non obligat*,"—a law which has not been promulgated has no obligatory power. For the Decalogue was not promulgated among the

iii. The Decalogue did not oblige the Gentiles living before Christ; therefore it does not oblige them now.

expositio. As a fact,—to say nothing of the notorious proclivity of the Jews to idolatry, which nevertheless counts for much in this matter,—few Christians, capable of serious thought, would care to deny that the Incarnation must have changed the relation of matter to religious symbolism and worship.

¹ Exod. xx. 4.

² Rom. ii. 14.

³ 1. 2^æ. xcvi. 5. o.

Gentiles of the old world, therefore it was no law for them; as S. Austin teaches us in his explanation of the 67th Psalm, where he is commenting on the words of the Psalmist, "The heavens dropped at the presence of the God of Sina, at the presence of the God of Israel. Thou shalt set aside for Thy inheritance a free rain, O God," (vv. 9, 10.) For thus he explains them: "for He did not so to any nation; and He manifested not His judgment to them. Therefore He set aside for *His inheritance* this free rain, forasmuch as *He gave the Law*."

iv. The Scriptures announce the abrogation of the Mosaic law without limitation.

Once more: in those passages of the New Testament which announce the abrogation of the old Law in the Church of Christ, the declaration is for the most part general, and adds nothing that is indicative of limitation or exception. For instance, S. Paul says, "Now, without the law, the justice of God is made manifest";¹ and, "Shall we sin, because we are not under the law, but under grace?"² So again: "Why, then, was the law? It was set because of transgressions, till the seed should come, to whom He made the promise. . . . Before that faith came, we were kept under the law, shut up unto that faith which was to be revealed. Wherefore the law was our pedagogue in Christ, that we might be justified by faith. But after that faith is come, we are no longer under a pedagogue."³ Nor must that passage from the Epistle to the Romans be forgotten, (on which we have already commented at some length), where the Apostle represents the liberation of the convert Jew from the Mosaic law, under the allegory of a wife freed from her marriage vow by the death of her husband. The whole run of his expressions is general here, as in the other places already cited, and does not suggest to the mind any exception. Nay, what is more, it is worthy of remark that a particular reference is made, if we may judge from the preceding and subsequent context, to the moral commandments, one of which,—the ninth of the Decalogue,—is specifically quoted by way of illustrating the Apostle's argument.⁴ But, as we have before stated, the moral principles, which form the substance of the Decalogue,

v. The moral precepts explicitly included by S. Paul.

¹ Rom. iii. 21.

² Galat. iii. 19, 23-25.

³ Rom. vi. 15.

⁴ Rom. vii. 7.

have not become obsolete; for they are mere echoes of the eternal law. It only remains, therefore, to understand the abrogation, which S. Paul maintains, as applying to the additional sanction that these precepts have received from their Divine promulgation on Mount Sinai.

We may fairly apply the same canon of interpretation to those instances of a like phraseology, with which the writings of the Fathers abound. To adduce a few examples by way of illustration,—S. Hilary remarks that “*on the breaking up of the law*, the time arrives for the announcement of the Gospel”;¹ and in another place, “*The law being ended*, the Word of God, getting on board ship, goes to the Church,”² suggesting a mystical interpretation of that incident in our Lord’s public ministry, on which he is commenting. So the same Father, once more: “*The law ceasing*, we are saved in the goodness of God.”³ In like manner S. Ambrose, distinguishing between the natural and the Mosaic law, implies that the latter was not of universal obligation; for thus he writes: “Law is twofold, natural and written. The natural law is in the heart; the written, on tables. *All, therefore, are under the law, but under the natural law.*”⁴ Lactantius pursues this thought of S. Ambrose; but his statement is clearer and more explicit. “The Lord,” he writes, “announced by the lawgiver himself,” (that is, Moses), “that He would send His Son, that is, a living and present Law, and repeal that old law given by means of a mortal, in order that He might give a fresh sanction to the eternal law by Him Who was the Eternal.”⁵ It is observable that he insists, in a subsequent passage, on the abrogation of the Jewish Sabbath in particular. S. Ma-

vi. The Fathers use the same natural phraseology.

¹ “*Dissipata lege, tempus Evangelicæ prædicationis advenit.*”—*Tract. in Ps. cxviii. litt. 16. n. 14. ad f.*

² “*Ergo Dei Verbum, lege finita, navem conscendens, Ecclesiam adit.*”—*Comment. in S. Matt. xiv. 13. n. 9.*

³ “*Et lege cessante, in Dei bonitate salvamur.*”—*Comment. in S. Matt. xii. 7. n. 5.*

⁴ “*Lex autem gemina est, naturalis et scripta. Naturalis in corde, scripta in tabulis. Omnes ergo sub lege, sed naturali.*”—*De fuga sæculi, c. 8. n. 15.*

⁵ “*Denunciavit scilicet Dominus per ipsum legiferum, quod Filium suum, i. e. vivam præsentemque Legem, missurus esset, et illam veterem per mortalem datam soluturus, ut denuo per Eum Qui esset æternus, legem sanciret æternam.*”—*De vera sapientia et religione, L. iv. c. 17.*

carius, again, draws a distinction between the old law and the new law of grace, which he puts antithetically in these words: "A law was given to them" (*i. e.* the Jews), "written on tables of stone, but to us spiritual laws written on the fleshy tables of the heart. *And the former of a truth were all abolished, and were only for a time; but now all things are perfected in the inner man, for the testament is within.*"¹ S. Jerome remarks to the same effect that "We are called true Sons of God; and the law, which has been abolished, does not bring us forth to Him, but [our] Mother, the Faith which is in Christ Jesus";² and, in another place, "*Christ has changed the difficulty of the old law by the completeness of Evangelical dogmas*";³ and yet more distinctly, "The law of Moses which, prior to the Gospel, was rich and powerful and clear, has since the coming of Christ become infirm and needy in comparison with Him, and has been weakened and destroyed by Him Who was greater than Solomon, than the temple, than John" (Baptist).⁴ This great Doctor of the Western Church enforces the same idea in another passage, to which we call the special attention of the reader, because it seems, like the quotation from Lactantius, to support, in explicit terms, the proposition that we are at present defending. These are his words: "So whatever in times past we were seen to do under necessity of law, we must understand that they are rather to be done out of charity, now that we are free. . . . Neither is it difficult to point out how all the precepts, Thou shalt not kill, Thou shalt not commit adultery, Thou shalt not steal, Thou shalt not bear false witness, and the rest like to these, may be kept by the simple observance of charity."⁵ It is

¹ "Ἐκείνους νόμος ἐδόθη πλαξὶ γεγραμμένος λιθίναις, ἡμῖν δὲ νόμοι πνευματικοὶ πλαξὶν ἐγγραφόμενοι καρδίας σαρκίνας. . . . κἀκεῖνα μὲν πάντα καταργούμενα καὶ πρόσκαιρα · νῦν δὲ πάντα ἐξ ἀληθείας εἰς τὸ ἔσω ἀνθρώπων ἐπιτελούμενα · διαθήκη τε γὰρ ἔσωθεν."—*Homilia* xlvii. § 3.

² "Veri Dei filii nominamur, Cui nos generat non lex abolita, sed Mater Fides quæ est in Christo Jesu."—*In Gal.* L. ii. c. 3. v. 24. et seqq.

³ "Antiquæ legis difficultatem Evangelicorum dogmatum integritate mutavit."—*Ibidem*, c. 4. vv. 1, 2.

⁴ "Lex Moysi quæ ante Evangelium dives, et opulenta, et clara fuit, post adventum Christi ad comparisonem ejus quasi infirma et egena, imminuta atque destructa est ab Eo Qui major fuit Salomone, et templo, et Jona."—*Ibidem*, L. ii. c. 4. vv. 8, 9.

⁵ "Ita et nos, quæcunque ante sub Legis necessitate facere videbamus,

plain that, in these words, S. Jerome vindicates the perpetual obligation of the moral precepts, while, at the same time, he as clearly admits a certain change in their relation to us since the establishment of Christ's Church. It is equally plain, that this change of relation is described as consisting in our translation from a state of statutory compulsion to the liberty of an internal, supernatural principle of action; for he contrasts the former moral necessity of law with the present freedom of charity. But how can these declarations of S. Jerome be verified, on the supposition that the Sinaitic sanction perseveres under the new economy of grace; seeing that, in such case, the compulsory force of the old law would remain unchanged?

The teaching of S. Jerome on this matter is very beautifully, according to his wont, pursued by S. Austin. This great Doctor, in his treatise, "*on the spirit and the letter*," is discussing the question as to whether those words of S. Paul,—“For when the Gentiles, who have not the law, do by nature those things that are of the law, these, having not the law, are a law unto themselves,”¹—are to be understood as referring to the old Pagan Gentiles, or to the convert Gentiles under the dispensation of grace. And he remarks that it makes little matter; for however we accept them, the difference between the Law and the Gospel remains the same. For if we suppose them to refer to the old Gentiles in the times of Paganism, and to the natural law imprinted on their consciences, “*Even so*,” as he pointedly remarks, “that distinction, which separates the New Testament from the Old, will not be unsettled,” (which consists in this) “that by the New Testament is written in the hearts of the faithful that law of God which, by means of the Old Testament, was written on tables. For that which was not entirely obliterated by lapse of time, is written therein” (*i. e.* in our hearts) “by renovation. Because as the image of God is itself renewed in the hearts of the faithful by the New Testament,”—(that

nunc sciamus, nobis liberis, magis per caritatem esse facienda. Neo difficile est docere quomodo universa præcepta, Non occides, Non adulterabis, Non furaberis, Non falsum testimonium dices, et cætera his similia, una charitatis observatione teneantur.”—*In Gal.* L. iii. c. 5. v. 14.

¹ Rom. ii. 14.

image) "which impiety had not entirely destroyed; (for this at all events had remained, viz. that the soul of man cannot possibly be other than rational)—so likewise" (in the instance before us) "the law of God, which had not been entirely blotted out by injustice, is assuredly written there, having been renewed by grace."¹

It would appear, from these words, that S. Austin recognizes, as regards one point, an identity in the relation of the Gentile in Pagan times on the one hand, and of the Gentile under the Gospel on the other hand, to the Divine Law, *i. e.* the eternal or natural law. That one point consists in this that in both cases alike, the Law was not promulgated from without by external authority, (for in this sense *they neither of them had the law*), but from within by the internal testimony of conscience, and,—in the instance of the Christian Gentiles,—by the renewing of the Holy Spirit. But how can such a parallelism be verified, if the sanction of Mount Sinai lives on in the Church of Christ?

vii. The Fathers teach the abrogation of the third commandment in the Decalogue.

This illation from the modes of expression common to the Fathers of the Church when they have occasion to touch upon our present subject, is further confirmed by the unanimity with which they bear witness to the abrogation of the sabbatical commandment. That they do so, is an undoubted fact. Thus S. Ambrose gives us an example of precepts in the old Law that have become obsolete in the new, the prescribed observance of the Sabbath, which was so strict "that if any one carried any load of wood on that day, he was liable to the penalty of death; but now we notice this very day devoted to carrying loads and the transaction of business without punishment. And there are the greater number of the precepts of the Law which are evidently in the present

¹ "Etiam sic illa differentia non perturbabitur, qua distat a vetere testamento novum; eo quod per novum scribitur lex Dei in corde fidelium, quæ per vetus in tabulis scripta est. Hoc enim illio scribitur per renovationem, quod non omni modo deletum est per vetustatem. Nam sicut ipsa imago Dei renovatur in mente credentium per testamentum novum, quam non penitus impietas aboleverat; nam remanserat utique id quod anima hominis nisi rationalis esse non potest; ita etiam ibi lex Dei non ex omni parte deleta per injustitiam, profecto scribitur renovata per gratiam."—*De Spiritu et Littera*, c. xxviii. n. 48.

time inoperative."¹ In another part of the same Epistle he attributes the institution of the Sabbath to the slippery character of the Jewish people, and adds that "The Synagogue observes the day, the Church immortality; in the Law, therefore, is a certain portion, in the Gospel perfection";² because the Jew observes one day in seven, the true Christian devotes every day of the week to the worship and service of God. S. Basil also alludes to the precept forbidding loads to be carried on the Sabbath day; and, like S. Ambrose, declares that it is no longer in force among Christians.³ S. Macarius has a homily on the difference between the old and new Sabbath, in the course of which he tells us his mind in the following plain terms: "In the shadow of the Law, given by Moses, God ordered each man to rest on the Sabbath day, and do no work; but this was a type and shadow of that true Sabbath, given to the soul by the Lord."⁴ The testimony of S. Jerome confirms the general witness of the Fathers.⁵ But the judgment of S. Gregory the Great upon this matter is peremptory; and his authority ought to have considerable weight with us, not only by reason of his sanctity, learning, and exalted position in the Church of God, but also because his name is indissolubly connected with the conversion of our Saxon forefathers to the faith of Christ, and with the first establishment of the English Church. The following is his Papal rescript: "It has reached my ears that certain men of a perverse spirit have been sowing among you some depraved doctrines, opposed to the

¹ "Deinde Sabbati diem feriatum esse debere observabatur ex lege, ita ut si quis onus aliquod lignorum portasset, mortis fieret reus; nunc autem diem ipsum et oneribus subeundis et negotiis obeundis sine pœna advertimus deputari. Et pleraque prœcepta sunt legis quæ præsentī tempore cessare videntur."—*Epp. Clas. ii. Ep. 74. Irenæo, n. 1.*

² "Sed quia lubricum populum Deus noverat, partem infirmioribus diei unius observatione præscripsit, plenitudinem fortioribus reservavit. Synagoga diem observat, Ecclesia immortalitatem. In lege igitur portio, in Evangelio perfectio est."—*Ibidem, n. 5.*

³ *In Esaiam, c. 1.*

⁴ "Ἐν τῇ σκιᾷ τοῦ νόμου τοῦ διὰ Μωσίου δοθέντος, προσέταξεν ὁ θεὸς ἐν τῷ σαββάτῳ ἕκαστον ἀναπαύεσθαι καὶ μηδὲν ποιεῖν τοῦτο δὲ τύπος ἦν καὶ σκιά τοῦ ἀληθινοῦ σαββάτου τοῦ δεδομένου τῇ ψυχῇ ἀπὸ τοῦ Κυρίου."—*Homilia xxxv. περὶ τοῦ παλαιοῦ καὶ τοῦ καινοῦ σαββάτου, § 1.*

⁵ *Ad Galat. L. i. ch. 3. v. 3.*

holy faith; so that they prohibit any sort of work on the Sabbath day. What can I call them but preachers of Antichrist? . . . For that which is said by the Prophet, 'Bring not burdens in by your gates on the Sabbath day' (Jerem. xvii. 22), could be observed so long only as the observance of the Law according to the letter was permitted; but after that the grace of the omnipotent God, our Lord Jesus Christ, has appeared, *the precepts of the law which are figurative cannot be observed according to the letter. . . . We therefore accept spiritually, obey spiritually, what is written concerning the Sabbath.*"¹ It appears from the Holy Father's subsequent monitions that these Sabbatarian zealots forbade the people to wash the whole body on the Lord's day likewise; and S. Gregory condemns this teaching too. His argument is practical and full of common sense; for he says, it is either sinful in itself so to wash, or it is not. If it is sinful, it would be equally unlawful to practise this act of cleanliness on any day of the week; if it is not sinful in itself, there is no more reason why we should refrain from washing the rest of the body than from washing the face, which nevertheless everybody does on a Sunday. What is required, he tells us, is to rest from servile work, and to apply ourselves to prayer.

It is not easy to see how this Patristic doctrine concerning the abrogation of the Sabbatical commandment is compatible with a maintenance of the opinion that we, Christians, are bound to the observance of the Decalogue,—over and above the prior sanction of the eternal law,—by the special sanction of the Sinaitic Code. For either the obligation extends to all the commandments, or to none, seeing that the sanction

is Patristic teaching concerning the abrogation of the ird commandment, consistent with the continuance of the Sinaitic action.

¹ "Pervenit ad me quosdam perversi spiritus homines, prava inter vos aliqua et sanctæ fidei adversa seminare, ita ut die sabbati aliquid operari prohiberent; quos quid aliud nisi Antichristi prædicatores dixerim? . . . Hoc enim quod per Prophetam dicitur, *ne inferatis onera per portas vestras die sabbati*, tandiu teneri potuit, quandiu legem licuit juxta litteram custodiri. At postquam gratia omnipotentis Dei Domini nostri Jesu Christi apparuit, præcepta legis quæ per figuram dicta sunt, juxta litteram servari non possunt. . . . Nos itaque quod de sabbato scriptum est, spiritualiter accipimus, spiritualiter tenemus."—*Epp. L. xi. indict. 6a. Ep. sive cap. 3.* It appears from the words of S. Gregory omitted in our first *lacuna*, that Antichrist, according to a tradition in the Church, will be a strict Sabbatarian.

is identically the same;—if to all, then we are not freed from the observance of the Sabbath, and the Fathers are in error;—if to none, the sanction has altogether ceased. Nor is it possible to evade the difficulty by discriminating such commandments as are embodiments of the natural law from those which are not. For who does not perceive at once that, by so doing, we are determining our obligation, as Christians, not by the sanction of the Levitical code, but by that of the eternal law?

We have reserved till now, by way of a crown, as it were, to our Patristic argument, the consideration of two remarkable testimonies which are of a nature to throw no little light on the present subject.

Two principal testimonies in favour of the author's opinion.

The first occurs in a short treatise of Tertullian against the Jews, in the earlier chapters of which the Christian Apologist enters at some length upon an examination of claims, set up by his opponents, to a Divine legislation, prior in order of time to any other, and exclusively constructed for them, as being the chosen people of God. In answer to these high pretensions, he points out that, as a fact, there was an anterior law given to Adam under the form of a special commandment, in which nevertheless the whole Decalogue was implicitly contained; and he calls it "the general and primordial law of God,"¹—*general*, because it was the common birthright of the whole human family; *primordial*, because no law had preceded, or could precede it. He further urges the persistence of this law through the ages that antedated the exodus of Israel. "Lastly," he writes, "before the written law of Moses there existed a law which was naturally apprehended, and was kept by the Patriarchs. For how was it that Noë was found just, if the justice of the natural law had not preceded him? How was Abraham accounted the friend of God, if not by means of the equity and justice of the natural law?"² He then goes on to show that the Mosaic code was not the *primary* law, but only a temporary and provisional reconstruction and

a. The first from Tertullian.

¹ "Igitur in hac generali et primordiali Dei lege," &c.—*Adv. Judæos*, c. 2.

² "Denique ante legem Moysi scriptam, quæ naturaliter intelligebatur, et a patribus custodiebatur. Nam unde Noë justus inventus, si non illum naturalis legis justitia præcedebat? Unde Abraham amicus Dei deputatus, si non de æquitate et justitia legis naturalis?"—*Ibidem*.

rehabilitation of the natural law, adding "that as the law was given by the hand of Moses at a stated time, so it must be believed that it was observed and kept for a time; and that we must not take away from God the power of rearranging, for man's salvation, the precepts of the law according to the condition of the times."¹ He confirms his argument by showing that, as the precepts of circumcision and of the Sabbath day were not observed by the Patriarchs before the time of Moses, who were nevertheless just before God; so now, under the Gospel, these temporary laws have been annulled, according to the prediction of the prophets announcing the future promulgation of a new law out of Sion in the days of the Messiah. This promise can refer only to us Christians, "who observe these (precepts) under the thorough teaching of a new law, *now that the old law has been obliterated.*"² This thought occasions his returning upon the fact of the abolition of the Sabbath; for, as he tells us, we perceive from the writings of the prophets "that the temporal Sabbath is human, the eternal Sabbath must be regarded as Divine."³ Finally, he sums up the first part of his treatise, and clears his ground for the consideration of the second, in the following words: "Therefore it is a necessary and incumbent duty on our part, seeing we have already asserted that a new law was foretold by the prophets,—not such as had been already given to their fathers at the time that He led them out of Egypt,—to point out and prove *both how that old law has come to an end*, and how the new law promised is now in operation."⁴ He thereupon proceeds to convince the Jews that their Messiah has come in the Person of Christ Jesus, and that it is He Who has established the new law of grace.

¹ "Ut sicuti certo tempore data est lex per Moysen, ita temporaliter observata et custodita credatur: nec adimamus hanc Dei potestatem, pro temporum conditione legis præcepta reformatem in hominis salutem."—*Adv. Judæos*, c. 2.

² "Qui nova lege edocti ita observamus, oblitterata veteri lege."—*Ibid.* c. 3.

³ "Unde dignoscimus sabbatum temporale esse humanum, et sabbatum æternum censi Divinum."—*Ibid.* c. 4.

⁴ "Itaque necessitas nobis incumbit, ut quoniam prædicatam novam legem a Prophetis prædiximus, et non talem qualis jam elata esset patribus eorum eo tempore quo eos de terra Ægypti produxit, ostendere et probare debeamus, tam legem illam veterem cessasse, quam legem novam promissam nunc operari."—*Ibid.* c. 6.

On this testimony of Tertullian we remark :

i. That he repeatedly asserts the abolition of the Mosaic law, without limitation expressed or implied.

Summary of
Tertullian's
doctrine.

ii. That he vindicates for the natural law priority of time and excellence of dignity.

iii. That he considers the Mosaic law, *as a whole*, to be a temporary and adaptational rehabilitation of the natural or eternal law.

iv. That he asserts the living presence of the moral precepts, afterwards embodied in the Decalogue, within the primordial commandment given to Adam in Paradise.

v. That he more than infers the parallelism between our condition under the Gospel and that of the Patriarchs before the time of Moses, as regards the relation to the unwritten and written law of God.

vi. That he repeatedly asserts the abrogation of the third commandment in the Decalogue prescribing the observance of the Sabbath.

vii. That he considers the Christian law, written on the fleshy tables of the heart, as a new and final development of the natural law, and a substitute for the Sinaitic.

The necessary and evident conclusion from such premisses is that which we have already drawn from the concurrent witness of the Fathers.

We shall find the second promised testimony in S. Gregory of Nazianzus, the great Theologian and distinguished Doctor of the Eastern Church.

b. The second, from
S. Gregory
of Nazian-
sus.

In his homily on holy Baptism, he is enumerating the several names by which that sacrament has been designated. And his mind would seem to have been particularly arrested by the title, *φωτισμός*, or Illumination ; which naturally leads him on to the contemplation of God as the infinite Light, and supreme Source of light. As Source and Fountain of light, He is ever pouring forth light upon His creatures ; so that, while He ever remains " the chiefest, and inaccessible, and ineffable, and incomprehensible Light " (*φῶς τὸ ἀκρότατον καὶ ἀπρόσιτον καὶ ἄρρητον, οὔτε νῦν καταληπτόν*), yet there are other lesser lights, created by Him, poured forth from Him, maintained by Him, continuing in Him, converging towards Him. For, as it were

in the second place, there are the Angels who are Light; and in the third and inferior place, men too are Light. Then there is the physical light of heaven, primal-born of all the things of creation.

From these the Saint proceeds to the consideration of light in another order, as follows:

“And the first-born commandment, too, that was given to the first-born of men was Light; since the commandment of the law *‘is a lamp and a light’* (Ps. cxviii. 105), and, *‘because Thy commandments are a light upon the earth’* (Prov. vi. 23); although the envious darkness, stealthily creeping in, created wickedness. And the written law was a light typical, and fashioned to the measure of those who received it;—shadowing forth the truth, and the sacrament of that great Light, seeing that the face of Moses is made resplendent by It.”¹

Summary of
S. Gregory's
teaching on
the point.

S. Gregory, in this beautiful passage, contrasts the written law of Moses with the natural law, as Tertullian had done before him; and asserts, first of all, that the former was typical,—a holy sign, or shadow, of the latter; then, that the Mosaic law was accommodated to the character of its subjects. Hence it follows that it was,—as the other Fathers, already quoted, have told us,—provisional and temporary; and though some of the expressions employed by this great Doctor apply more pointedly to the ceremonial precepts, yet he is clearly treating the old Law as a substantive whole. It does not, therefore, become us to set any limit to the application of his words.

Scriptural,
Patristic,
and Scholas-
tic expres-
sions which
seem op-
posed;—
true expla-
nation, and
answer to the
difficulty.

If, then, we find that the Holy Scriptures, or the Fathers, or some of the Doctors of the School, speak of the moral precepts embodied in the Decalogue and enforced therein, as eternal, obligatory, or as fulfilled in the new law of Christ, it need not surprise us, or awaken any suspicion, lest the conclusion we have drawn should be opposed to their teaching. If our Blessed Lord admonishes us, “Think not that I am

¹ “Φῶς μὲν ἦν καὶ ἡ τῷ πρωτογόνῳ δοθεῖσα πρωτόγονος ἐντολή· ἐπειδὴ λύχνος ἐντολῇ νόμου καὶ φῶς· καὶ διότι φῶς τὰ προστάγματά σου ἐπὶ τῆς γῆς· εἰ καὶ τὸ φθονερὸν σκότος ἐπεισελθὼν τὴν κακίαν ἰδημιούργησεν· φῶς δὲ τυπικὸν καὶ σύμμετρον τοῖς ὑποδεχομένοις, ὁ γραπτὸς νόμος, σκιαγραφῶν τὴν ἀλήθειαν, καὶ τὸ τοῦ μεγάλου φωτὸς μυστήριον. εἰπερ καὶ τὸ Μωϋσείως πρόσωπον οὕτως δοξάζεται.”—*Oratio* xl. n. 6.

come to destroy the law, or the prophets; I am not come to destroy, but to fulfil;"¹—if S. Paul boldly puts the question, "Do we then destroy the law through faith?" and as boldly and emphatically answers his own question, saying, "God forbid: but we establish the law,"² we have an answer to the seeming difficulty, that is plain and provided for us by the Fathers. If S. Augustine assures us, that "the Law is partially obeyed in the Christian faith; for there are some precepts in it which even to this day we, as Christians, are commanded to obey";³—or if we find S. Bernard insisting, that "Christ our Lord came, full of grace and truth, that henceforward the moral precepts might be fulfilled by grace, and that those which were shadowy and symbolical might not henceforth, after revelation of the truth, be observed in the letter, but spiritually apprehended according to the spirit,"⁴ the same answer will bestead us in our seeming need. And if S. Thomas asserts that "the new law does not make void the observance of the old, save as regards ceremonials,"⁵ or that "the old law is said to be eternal simply and absolutely, as regards the moral precepts,"⁶ the same answer is ready to our hand. For all these authorities, Divine and human, are simply maintaining the eternal obligation of the natural law, recapitulated in the Decalogue, and of its far nobler development in the Kingdom of Christ. But this no one would dream of calling in question. Who can doubt that we are bound to serve and worship God, to honour our parents, to do justice with our neighbour, and to avoid voluntary indulgence in impure or covetous desires, now as ever? The substance of the Deca-

¹ S. Matt. v. 17.

² Rom. iii. 31.

³ "Ex aliqua parte lex observatur in fide Christiana. Ibi enim sunt præcepta, quæ hodieque observare Christiani jubemur."—*QQ. in Numeros*, Q. 53.

⁴ "Venit proinde plenus gratia et veritate Christus Dominus noster, ut ex hoc jam moralia quidem impleantur per gratiam; quæ vero umbratilia et mystica fuerant, revelata veritate deinceps non ad litteram observentur, sed secundum spiritum spiritualiter intelligantur."—*Sermo lxxvii. de Diversis (aliter xxviii. ex parvis)*. Ed. Maur.

⁵ "Lex nova non evacuat observantiam veteris legis, nisi quantum ad ceremonialia."—1. 2æ. cvii. 2. ad 1m.

⁶ "Lex vetus dicitur esse in æternum, secundum moralia quidem simpliciter et absolute."—1. 2æ. ciii. 3. ad 1m.

logue remains for everlasting, because, and so far forth as it is the natural law. But that is not the point. We demur to the assertion that the Sinaitic sanction binds us Christians, by its own proper force of obligation, to the observance of these precepts, beyond, and irrespective of, the prior sanction of the eternal law.

viii. The opposite opinion derogatory to Christ and to Christian freedom.

There is yet another argument in favour of the opinion which we are at present occupied in defending. The supposition that the sanction of the Mosaic law continues to maintain its obligatory force in the Christian Commonwealth, appears to derogate from the excellent dignity of Christ as the new Lawgiver, and from that perfect freedom which is one principal appanage of His adopted brethren. It seems to intimate that the supreme sanction of the Blessed Spirit,—Who is specially within us by virtue of His ineffable Mission from the Father and the Son, and writes that law of charity in our hearts which He confirms with the seal of His own overflowing grace,—is not enough; and that the Divine Redeemer must therefore have recourse to that other sanction, provided for a transitional dispensation and an unregenerate people, in order to secure the observance of His new commandment. It is as though, in a way, Christ our Lord had need to fall back upon Moses. Again; if we are heirs of God and joint heirs with Christ, we are no longer in any sense children of the bondwoman. If we have attained our majority in Christ Jesus,—if we have entered already, albeit partially, into our inheritance,—if we have put away childish things, we *do* differ from the servant; for we are no longer under the bondage of the schoolmaster, but are governed thenceforward by the spirit of filial love and of filial fear. If we are under grace, we are no longer under the old law, or under the sanction of that law. If our life is charity, which is the fulfilling of the law, we have nothing whatsoever in common with the thunderings and lightnings of Sinai. If Christ, our Lord and our Redeemer, has written His new law, as a principle of life in the fleshy tables of the heart, we have no further need to spell it out upon the two tables of stone.

Conclusion of the argument.

For the reasons, therefore, enumerated above, we conclude that we are not bound, as Christians, to the Sinaitic law, even

in respect of the moral precepts;¹ which it is our duty to obey,—to apply the conclusion of the Angelic Doctor concerning the Gentiles of the old world, to ourselves,—“not because these precepts belong to the old law, but because they belong to the law of nature.”²

At length we have concluded our work of demolition; and, if the doctrine of Suarez be true, not a fragment of the old Mosaic legislation remains, save in the pages of history. It was a miracle of the Divine Wisdom and Omnipotence,—ushered into the world by miracles,—preserved alive, by a succession of miracles, among a stubborn and wayward people, in whose natural character the will predominated over the intellect,—defended from foreign invasion and domestic treason by further miracles,—by miracle ended, as by miracle it began. It was verily and indeed a Divine idea; but in the fulness of God's wisdom it was only a provisional part of one mighty whole. It was, so to speak, another S. John Baptist,—a forerunner of the Christ; and when He came, its office was at an end. The strength of the cross rent its veil of separation asunder from top to bottom, and admitted the Gentiles into its Holy of Holies. Its symbolic Temple, with her pinnacles and porches, once glistening, like God's bride come down from heaven, in the brightness of an all but meridian sun, is now a thing of the past, and in vain does the impious industry of man essay to rear it once more on the well-nigh deserted hill

The whole Levitical law annulled, without exception, since the coming of Christ.

¹ The doctrine defended in the text is clearly given by two well-known commentators of the Society of Jesus. Salmeron says, “Vocat illos mortificatos legi, quod attinet ad augmentum peccati . . . et quantum ad vim etiam obligandi, non tantum ob ceremonias et judicia, sed etiam ob moralia; quæ quatenus a Mose præcepta sunt, nos non arctant, nisi quatenus a Christo repetita et commendata.”—*In Rom.* vii. disp. 6. t. xiii. p. 505. col. 2a. Colonis Agrippinæ, 1604. Cardinal Toletus confirms this view in *Ep. ad Rom.* iii. annot. 15. “Dico ergo totam obligationem illam, quæ ex scripta lege et ordinatione tunc erat, cessasse; et ideo absolute lex illa jam completa est, nec in Evangelio obligat; tamen opera legis non omnia cessarunt. Nam moralia in Evangelio manserunt, et fideles obligant, non quia veteri lege erant præcepta et statuta, sed quia naturali rationis lumine sunt dictata, quod et Gentibus est commune. Rursus etiam quia a Christo Domino sunt renovata, et in Evangelio stabilita.”

² “Quantum ad illa quæ lex vetus continebat de lege naturæ, omnes tenebantur ad observantiam veteris legis, non quia erant de veteri lege, sed quia erant de lege naturæ.”—1. 2æ. xciii. 5. o.

of Sion. The smoke of early sacrifice no more shall rise from its many altars, now of long time levelled with the ground. Its priesthood has perished from off the face of the earth. The children of Levi are no more ; and even the fruitless hope of Jewish credulity, while it would imagine traces of their survival in some surname putatively symbolical of a past consecration, bears unwilling testimony to the futility of its own researches. That singular Theocracy, which came forth alive from its conflicts with Assyria, Egypt, Babylon, Persia, and Macedonia, has ceased to exist. It had done its appointed work, and was destroyed. A merely national promise has developed, (for so has God willed it), into a world-wide regeneration. The sceptre has departed from Judah, and the sons of Abraham according to the flesh, are no longer heirs to the promises ; but in their place spiritual children of his have been raised up from the four corners of the earth,—a people ready in the day of God's power. The son of the bondwoman has been cast out, for he was not to be heir with the son of the free woman.

Neither has it fared better with the whole of that complicated code of moral, judicial, and ceremonial precepts, exuberant in its fulness but fearfully rigid in its discipline and punishments, which the Divine Goodness had prepared for this people of election. Shadows have made way for the substance ; types have been supplanted by their antitypes. Circumcision is no longer of Divine command ;—Sabbath observations have become a pernicious superstition ;—sacrifices of oxen, rams, and goats have receded before the presence of that one *Sacrifice and clean Oblation*, foretold by Malachias the prophet,¹ which is now daily offered in every place on the altars of the Catholic Church. The ceremonial law is fulfilled, and ends in its own fulfilment. The judicial precepts, too, have vanished, with the Divinely-instituted polity of which they were the guard and nurse. Last of all, the moral precepts of the Decalogue have vanished likewise, in their character of positive law written on stone for a gainsaying people. They are no longer set in the terrors of Mount Sinai, as jewels in the sacerdotal breastplate ; though they still find their pri-

¹ Malachias i. 11.

meval sanction, under God, in the mind of man, and awake to a new life under that higher sanction, echoed from the Mountain of Beatitudes along all the ages of the new dispensation. The tables of the old law have been for ever lost. Yet, as there existed long before the great Theophany in the wilderness,—even from the cradle of history and the first fountains of intellectual life,—so now, and thence onward to the end of all things, though the seven-branched candlestick has been extinguished in the sanctuary of Sion, there is a lamp perpetually burning before the Invisible in the imperishable Temple of the human conscience.

The Jewish economy, like Palmyra or Nineveh, is a gigantic ruin; though its hieroglyphics, devoted to a higher and more enduring purpose, are transferred to a new shrine. The birds of night find their nest in the deserted aisles; and living thought breaks not in upon the silence of their solitude. He has said it, Whose word returns not to Him void; “There shall not be left here a stone upon a stone, that shall not be thrown down.”¹

¹ S. Matt. xxiv. 2.

CHAPTER III.

THE DISPENSING POWER.

WE are forced to condemn the reader to one other preliminary, and somewhat technical inquiry; for, till the subject of this inquiry has been sufficiently explained and its principles determined, it would be a mere waste of time to undertake an examination of the main question which Dr. Pusey has invited us to select for the subject-matter of the present essay. We propose, then, in this chapter, to give a definite explanation of the nature, limits, and power of dispensation.

analytical
inquiry into
the nature of
dispensation.

And, first of all, what constitutes a dispensation? What meaning does the word convey? So far is plain, that it conveys the idea of a certain change in the law which is the object of the dispensation. But what sort of change is it? Is it a change in the substance, or subject-matter of the law? This is evidently not the idea; for everybody understands by dispensation a change in the relation of the law to those who are its subjects, and not a change in the nature of the law itself. But is all change of relation in a matter of law a dispensation? Certainly not; but only that particular change of relation which affects its obligatory force. Dispensation essentially includes the idea of exemption from legal obligation. Is all exemption, then, from legal obligation a dispensation? Not so; for there may be *universal* exemption from a given law, either by reason of its having fallen into desuetude, or by express will of the legislator, or by introduction of a new law that is incompatible with the observance of the former, or from other causes. Such exemption is not a dispensation, but,—if permanent,—is called an *abrogation*, *translation*, *annulling*, *repeal* of the law;—if only temporary,—it goes by the name of *suspension*. Again; there may be a *particular* exemption from

the operation of the law ; that is, an exemption granted to one or more individuals, not to the entire community. For a certain individual, or a certain number of individuals, may be exempted from a specific legal obligation, on the condition of their submitting themselves to another, and in some sort equivalent obligation. This is not a dispensation, but a *commutation*; as, for instance, when the English Government absolved its subjects from payment of tithes in kind, on condition of their paying a fixed annual sum according to legal valuation. So, again, certain persons who have been *de facto* subject to a particular law, may be released by a declaration, made juridically, that the law does not apply to their case ; as not unfrequently occurs in courts of equity. Neither is this a dispensation, but a mere interpretation of the law ; and in no-wise affects its obligatory force, save in so far as it determines with greater precision the quality of those who are intended to be reached by its provisions.

What sort of change, then, in the law is called a dispensation? The Jurists unanimously answer, with S. Thomas, that it is "a certain relaxation of the general law";¹ or, as Suarez puts it, "It is the removal of obligation to a law in some particular case."² It must be a general law ; because if the precept were merely personal, the dispensation, so called, would be tantamount to an abrogation.

Generic definition.

These definitions, however, valuable and excellent as they are, nevertheless are not sufficiently precise for our purpose. We therefore say, with Suarez again for our guide, that "A dispensation, in the strictest sense of the term, is given, when the legal obligation, which previously bound both the community and the given individual, is removed from that individual, while the law retains its obligatory force over the community with respect to the same subject-matter."³ It partakes, there-

Specific definition given by Suarez

¹ "Dispensatio est communis juris relaxatio."—4. d. xlv. Q. 1. a. 3. q. 4. ad 1m.

² "Ablatio vinculi legis in aliquo particulari casu."—*De Legg.* L. vi. c. 10. n. 6.

³ "Dispensatio tunc propriissime fit, quando obligatio legis, quæ antea et communitatem et talem personam obligabat, ab hac persona tollitur; cum maneat lex communitatem obligans circa eandem materiam."—*De Legg.* L. i. c. 20. n. 8.

fore, of the nature of a privilege ; and may with equal justice be said to consist in a change of our relation to the law, as in a change of the law's relation to us, its subjects.

Two questions that arise.

This examination into the exact nature of a dispensation leads us on to the consideration of two questions of grave moment. The one regards the power ; the other, the allowableness of exempting individuals from the observance of a law.

1. As to the dispensing power ; with whom it resides.

Answer of S. Thomas.

It concerns us, therefore, first of all to understand in whom the dispensing power legitimately resides. It may fairly, then, be assumed, as being a principle common to all law and universally received, that "no one can give a dispensation, unless it be either the person from whom the law derives its authority, or one that has received commission from him."¹ The authority may be his either mediately or immediately ; but it must reside in him either proximately, or ultimately and absolutely. So, in all human legislation, the statutes receive authority and sanction *immediately* from the supreme legislative power in the State, whatever that power may be ; yet they are traceable to God mediately and in ultimate analysis. He, therefore, and He alone, can dispense universally from the observance of any law whatsoever, where dispensation is morally possible, and not intrinsically repugnant ; whereas men, on the contrary, can grant exemption from those laws only, over which they have an inherent, or deputed right of authority.

2. As to the lawfulness of dispensation.

The second question regards the allowableness of dispensation ; and a most vital question it is. For a ruler may have all due authority to exempt individuals from the observance of a law, and yet may be guilty of a grave iniquity in making use of his power in a given case ; so that, though the dispensation would be valid, he would be responsible to God for the violation of the right order.

General resolution, from an examination of law in the abstract.

It is observable that in all legislation there are two measures which regulate, the one, the subjects of the law, the other, the law itself. The regulating measure of the governed is the substance of the measure itself ; the regulating measure of the law is the intention of the legislator or, in other words, the

¹ "Non potest dispensare nisi ille a quo lex auctoritatem habet, vel is cui ipso commiserit."—D. Thom. 1. 2æ. xcvi. 4. ad 3m.

end he proposed to himself in establishing it. As, therefore, the subject acts irregularly, if he transgress the statute; so, in like manner, the law loses its intrinsic rectitude, if under any circumstances that may arise, it diverges from the intention of the legislator. But the one sole intention of a legislator in the framing and promulgation of a law, if he be a legislator in deed and in truth, is, and must be, to establish or preserve the moral order in the commonwealth. Consequently if, owing to a change of circumstances or to the altered condition or character of the people, a law no longer realizes this intention, in the supreme and eternal Court of equity it *ipso facto* and at once ceases to be law. But it may, not unfrequently, happen that, although the law continues to promote this end among the great body of the community, it may nevertheless, for peculiar reasons, fail to do so in this or that given case.

With the foregoing propositions for our premisses, we conclude that if a law, by its very nature, absolutely and of itself, is so essential to the preservation of the moral order that without its operation this order would be impaired, no dispensation from its observance is in any conceivable case permissible. If, on the other hand, the law is of such a nature, that a temporary exemption from its authority in a given case would not tend to the injury or attenuation of that just measure of all laws which is the ultimate reason of their institution, in that particular case, and to such extent precisely, dispensation may be given lawfully and even with advantage. Further still, if in certain instances the law,—which, by reason of its universality cannot be supposed to embrace exceptional cases,—should diverge from the intention of its framer, here again dispensation is not only permitted, but is praiseworthy.¹

These conclusions will serve as so many canons by which we shall be enabled to determine the several problems that arise, when we turn our attention to the question of dispensation in the concrete, and in its relation to those different kinds of law which are more particularly connected with the subject of this essay. And such precisely is the task which now awaits us.

¹ Cf. D. Thom. in 3. d. xxxvii. a. 4. in c.

Particular resolutions; 1. as regards the natural law.

The answer twofold; because two classes of precepts in the natural law.

To begin with the natural law: Can any one grant a dispensation, properly so called, from its observance, in any supposable case?

If this question is to receive a full and strictly Theological answer, it will be necessary to premise an otherwise valuable distinction of the Angelic Doctor. For the natural law embraces two distinct classes of moral precepts. First of all, there are those which are general, primary,—first principles of moral,—constituting what Logicians would call the dignities, or fundamental axioms. And these are eternal, and as immutable as is the Being, or Wisdom of God, from Whom they proceed as their primal Source. Such are the commandments of the Decalogue. Then there is the other class, which consists of what we may call secondary precepts,—particular conclusions derived and deduced from the former, and usually, therefore, the more practical as being the more definite.¹

a. No human authority can dispense from the primary precepts;

b. not even the Pope;

Since our reply to the question proposed must accommodate itself to this division of the moral precepts, we commence by asserting, (a) that no human authority of whatever sort can dispense from the observance of the former, under any conceivable circumstances. Hence it follows by strict and necessary consequence, (b) that the Pope cannot grant such a dispensation. S. Thomas clearly expresses this opinion in several places.² Suarez maintains the same opinion,—cites a long list of Theologians as well as Jurists in its favour,—declares that it is the common opinion of modern Theologians,—and adds that, in his judgment it is altogether true.³ Sanchez thinks the opposite opinion to be more probable, and quotes certain authorities in its favour,—all, with one exception, Jurists.⁴ That exception is Melchior Canus, who gives the two opinions, and, as if hesitatingly, adds that he inclines to the one which affirms the power of the Church to dispense *in jure naturali et Divino*,—"in natural and Divine law."⁵ But

¹ D. Thom. 1. 2m. xciv. 4. o; xcvi. 4. ad 3m; 4. d. xxxiii. Q. 2, a. 2. q. 1. o.

² "Circa ea quæ sunt juris divini vel juris naturalis dispensare non potest" (Papa).—Quol. iv. 13. in o.; cf. 4. d. xxvii. Q. 3. a. 3. ad 2m.

³ De Legg. ii. c. 14. n. 5.

⁴ De Matrimonio, L. viii. disp. 6a.

⁵ Relect. de poenit., Parte 6a.

the extrinsic and intrinsic evidence so notably preponderates in favour of the contrary proposition, that we may consider it as theologically certain.

We affirm, lastly, that God Himself cannot grant a dispensation, in the full rigour of the term, from the observance of these primary moral precepts. Such is the opinion of S. Thomas, repeated several times in different parts of his works. Thus, in the *Summa*, he says that "as regards the first principles of the natural law, the natural law is wholly immutable."¹ So again: "Therefore the precepts of the Decalogue admit of no dispensation whatsoever."² So, once more, and in plainer terms: "Therefore God cannot dispense in this, that a man should be allowed to free himself from a well-ordered relation to God, or should not be subject to the order of His justice in the mutually ordered relations of man to man."³

c. not God
Himself.

Nevertheless it must be acknowledged that the Angelic Doctor in other passages seems to maintain a somewhat modified, if not opposite doctrine. Thus, after having given an elaborate proof for his conclusion, he announces it in these words: "And for this reason it is said that God cannot dispense from the observance of the precepts of the first table, which immediately regulate our relation to God; but that God can dispense from an observance of the precepts of the second table, which immediately regulate our relation to our neighbour, but that men cannot dispense from their observance."⁴ So again; "For God can, as S. Bernard says, dispense from an observance of the precepts of the second table, by which man's relation to his neighbour is immediately regulated; because our neighbour's good is a sort of particular good. But He cannot dispense from an observance of

Apparent
contradiction in the
teaching of
S. Thomas
on this last
point.

¹ "Quantum ad prima principia legis naturæ, lex naturæ est omnino immutabilis."—1. 2æ. xciv. 5. in c.; cf. xcvi. 1. ad 1m. et 3. d. xxxvii. a. 4. o.

² "Et ideo, præcepta Decalogi sunt omnino indispensabilia."—1. 2æ. c. 8. in c.

³ "Et ideo in hoc Deus dispensare non potest, ut homini liceat non ordinate se habere ad Deum, vel non subdi ordini justitiæ ejus, etiam in his secundum quæ homines adinvicem ordinantur."—1. 2æ. c. 8. ad 2m; cf. 4. d. xxiv. Q. 1. a. 3. q. 5. ad 2m.

⁴ "Et propter hoc dicitur, quod contra præcepta primæ tabulæ, quæ ordinant immediate in Deum, Deus dispensare non potest, sed contra præcepta secundæ tabulæ, quæ ordinant immediate ad proximum, Deus potest dispensare; non autem homines in his dispensare possunt."—1. d. xlvii. Q. 1. a. 4. in c.

the precepts of the first table, by which man's relation to God is regulated, since He cannot turn away others from Himself, because He cannot deny Himself."¹ From these and similar passages it would appear as though S. Thomas admitted, that God could really and properly dispense from the observance of the natural law, in all that concerns the duty of man to his neighbour.

solution
of the diffi-
culty.

But this disagreement of S. Thomas with himself is more apparent than real. For, as Suarez appositely remarks,² God can be truly considered as under a threefold relation to the moral ordering of His intellectual creature. He is at once supreme Legislator, supreme Lord, and supreme Judge. As supreme Legislator, He can dispense in all cases where dispensation is morally possible. But it is not under such relation that those examples naturally or properly range themselves, which have given occasion to the above-mentioned doctrine of S. Bernard, S. Thomas and other Doctors of the School. For it must not escape the knowledge of the reader, that these great authorities have made the statements quoted with an eye to certain histories in the Old Testament, in which God gives commands to His servants that seem to be in direct contravention of the natural law;—a difficulty, it may be observed in passing, which has been resuscitated, and irreverently handled in our own day. It will not be without profit, therefore, to the reader, independently of the connection of the problem with our present inquiry, to be provided with its satisfactory solution.

origin of
the question.

To continue: Considered under the relation of supreme Lord and Master of all His creation, God has absolute and irreclaimable dominion over all that we have and are,—over our lives, fortunes, property, rights. He can therefore change the value, so to speak, of these, and consequently change the character of the moral action of which they are the object; for they are all at His entire disposal, to do with them accord-

¹ "Potest enim Dens, ut Bernardus dicit, dispensare in præceptis secundæ tabulæ, per quæ homo immediate ordinatur ad proximum; bonum enim proximi est quoddam bonum particulare. Non autem potest dispensare in præceptis primæ tabulæ, per quæ homo ordinatur in Deum, qui a seipso alios non potest avertere; non enim potest negare seipsum, ut dicitur 2 Tim. ii. 13."—*De Malo*, Q. iii. a. 1. ad 17.

² *De Legg.* L. ii. c. 15. nn. 19 et seqq.

ing to His good pleasure. Thus he can, by virtue of His sole command, make an action of a man on the person or goods of another, which, before such exercise of His supreme Dominion, would have been illicit and against the moral law, to be at once lawful and meritorious,—not by suspending the obligatory force of the law itself, (for this, as we contend, He cannot do, since He cannot deny Himself,) but by changing the nature and condition of the object, and so subtracting it from the circumference of the prohibition. Thus, e. g., as He ever was, is, and ever will be, supreme Lord of life and death, the life of Isaac was in His hands; and He could, without injustice, deprive him of that life, how, and when, and where He pleased. But if He could do this immediately Himself, is it not patent that He could also use Abraham as His instrument to such an end, without being obliged to give the Patriarch a dispensation from the observance of the fifth commandment? So, when God permitted the Israelites to spoil the Egyptians, He had no need to dispense them from the observance of the seventh commandment, because He had the supreme dominion over the property, and could transfer it to whomsoever He pleased.¹ In fact, something more may be said concerning His permission given to the liberated people; for, as the wise man tells us, “The wisdom of God rendered to the just the wages of their labours.”²

That the Angelic Doctor used the word, *dispensation*, in this less precise sense, as merely indicative of a change in the formal action consequent on a change wrought by Divine authority in its material object, not only commends itself to our acceptance as defending this greatest of Theologians from the semblance of self-contradiction, but is clearly to be gathered from his own declarations. Thus, in the context to a passage just quoted, he thus expresses himself on the subject: “Some sins there are, which *immediately* involve a violation of that order which directs us towards our final end. For it happens that some one act of sin is *immediately* concerned with what is related to that end. And since the form of moral goodness is derived from the end in those things which are

Proof that
S. Thomas
uses the
word *dispensation*
in
a loose
sense.

¹ Of course such transfer of dominion is only occasionally made; and the Will of God is so manifested as to preclude hallucination, or the formation of a dangerous precedent.

² Wisdom x. 17.

related to the end, it must needs be that the form of wickedness should in like manner consist in this, that it withdraws from the end. And that which is, so to say, material is the act employed about that which is incapable of orderly direction towards the end; as in fornication, in homicide, and the like. Wherefore, if another order conducive to the end be conferred on that which (of itself) is incapable of orderly direction to the end, the inordinateness will be removed, and it will remain a well-ordered act, submissive to an antecedent will. But this cannot be done save by Him Who has established that order; and therefore whatever has been ordained by the Divine law is incapable of change or dispensation, except by Divine precept."¹

Real meaning of his words.

From these words we cannot but conclude that by dispensation S. Thomas does not mean a positive suspension of the law in a given case; as he explains it himself to be a subtraction of the material act from its attitude of opposition to the law. For this is, in other words, what he says. The moral rectitude or malice of human action formally consists in the intention directing the act to the attainment of man's constituted end. That the act has *de facto* for its object something either capable or incapable of conspiring towards that end, is, as it were, merely material; or, in other words, is accidental to its intrinsic morality. But then there are certain objects so essentially inordinate in themselves, that they necessarily involve an inordinate intention in him who wills them. But if, by Him Who alone can do it, that inherent inordinateness of the object is expelled by the introduction of a new, supernatural order, the will can elect it with the intention of pursuing thereby its

¹ "Quædam vero peccata sunt quæ dicunt deordinationem a fine ultimo immediate. [Contingit enim aliquem actum esse immediate circa id quod est ad finem; et quia forma bonitatis est a fine in his quæ sunt ad finem, oportet quod etiam forma malitiæ sit ex hoc quod recedit a fine; et id quod est quasi materiale est actus exercitus circa id quod est inordinabile ad finem; sicut in fornicatione, homicidio, et in huiusmodi. Unde si ei quod est (inordinabile?) ad finem, conferatur alius ordo in finem, tollitur inordinatio, et remanebit actus ordinatus, subjacens voluntati antecedenti. Hoc autem non potest fieri, nisi ab eo qui ordinem illum posuit; et ideo ea quæ sunt ordinata per legem divinam, non sunt mutabilia vel dispensabilia nisi præcepto Divino."—l. d. xlvii. Q. 1. 4. o. The bracketed passage is an interpolation; according to the Editors of the Vivès edition (Paris, 1873). But we retain it, as at all events an exposition of the doctrine maintained by the Angelic Doctor, and as having been heretofore embodied in the text.

appointed end; and the action is in conformity with the moral order.

An objection may possibly be urged against this explanation. It may be said that a dispensation, in a sense so indefinite as that just given, would seem to be as admissible in the matter of the first table as in that of the second; since God could with equal ease change the nature of the material object in both cases, and so subtract the action of which it is the object from the prohibition of the law. But this it is precisely which we most emphatically deny. There is nothing in the material action of taking away the life of another that is intrinsically evil; otherwise it would be a crime to execute a criminal, or to slay in a just war. So again there is nothing of itself in the material action of seizing upon another man's goods; otherwise all forfeitures to the State,—the seizing upon booty, or taking prizes in time of war,—all penal sequestrations, would be violations of the natural law. But the commandments of the first table are indissolubly connected with the essential relation of the reasonable creature to its Creator, and not even God can avert others from Himself; for this would be to deny Himself. Under what conceivable circumstances, or by what possible order, could it be conducive to man's end, which is God, to use His most holy Name insultingly, or offer Divine worship to an idol? There is, in these and the like cases, an intrinsic and essential aversion of the material object from the true end of man, which God cannot change without ceasing to be God, and without denying His own immutable position as the one great Creator of all things visible and invisible. It is on this point identically that the two tables of commandment differ. For in the first table the material and the formal object of human action are, so to say, one and the same; and, therefore, as God cannot change the formal object, or dispense man, under any conceivable hypothesis, from pursuing the end for which he was created, so neither can He change the material object of the first table, or dispense a man from that reverence and worship which is exclusively and absolutely His due.

Objection
this solu-
tion.

Answer.

We have heretofore treated primarily of the moral precepts themselves in their relation to the dispensing power; and

secondarily of human action, in so far as it ranges itself definitely under one or other of those precepts. In so doing, however, we have by no means exhausted the subject. For the actions of men are often of so complex a character, as to render it a matter of some considerable difficulty to determine the precise category under which we may rightly class them.

Preliminary inquiry into the kinds of human action, in their especial relation to their object.

It will not be amiss, then, to fix our attention for one moment on the different species of human acts, considered more particularly in their relation to the material object; for it will assist us in more easily grasping the main subject of the essay, and will enable us at once to determine the second question, that still awaits us, touching the dispensing power in the matter of immediate and probable conclusions from the first principles embodied in the Decalogue.

Three kinds, —indifferent —immu- tably deter- mined— mixed.

S. Thomas suggests a threefold division of human actions. Some, in themselves and *objectively* considered, are indifferent. We add those words, *in themselves and objectively considered*, advisedly; because no act of man as such, if considered *subjectively* and in the concrete, can be indifferent. Such actions, in the abstract, are neutral. In the concrete, they must be either good or bad; because the intention, which must be at the helm, rescues them from their neutrality, and gives to them, of necessity, a moral colour. However, such actions do not affect the present inquiry; so we may dismiss them.

Indifferent actions irrelevant to the present question.

Actions of an immu- tably deter- mined moral nature do not admit of dispensa- tion.

The second class of actions comes directly and immediately under one or other of the great precepts of the natural law, which are immutable. Of these we have already treated; and it has been shown that, in their case, dispensation, properly so called, is absolutely and wholly inadmissible.

Mixed ac- tions, whose morality is not immu- tably deter- mined.

Explanations and examples of S. Thomas.

But there is yet another class which partakes partly of the nature of the first, partly of the nature of the second class just mentioned, and is nevertheless distinct from both. It consists of actions which,—to adopt the description of S. Thomas,—“if they are considered absolutely, carry with them a sort of deformity or of inordinateness, but are notwithstanding rendered good by addition of certain circumstances.” Taken in the abstract, they fall under the prohibitions of the Decalogue; but, as they frequently appear in the actual life of man, they are rescued from the prohibitory precept, by reason of certain

accidental adjuncts. Thus, for example,—we are again quoting from the Angel of the Schools,—“to kill or strike a man, of itself carries with it a certain deformity; but if we add, to kill a malefactor by order of justice, or to strike one that has offended for discipline’s sake, it will not be a sin, but an act of virtue.”¹ In the number of such cases S. Thomas includes the possession of more than one benefice. In itself it is clearly wrong. But if, in a particular instance, a priest can be of greater service to the Church by his occasional presence in several churches, and his influence, even when personally absent, can do more for God than the presence of others less zealous, less esteemed, or less gifted; then, under such circumstances, the irregularity ceases, no dispensation is necessary, and the act itself, under the informing influence of a supernatural intention, becomes virtuous and meritorious.

We have as yet considered acts of this nature merely in their relation to the natural law. And so far it is plain that, in the cases supposed, no dispensation is required; for they

In their relation to natural law no dispensation required.

¹ “Sunt vero quædam actiones quæ, absolute consideratæ, deformitatem vel inordinationem quandam important; quæ tamen, aliquibus circumstantiis advenientibus, bonæ efficiuntur; sicut occidere hominem, vel percutere, in se deformitatem quandam importat; sed si addatur, occidere malefactorem propter justitiam, vel percutere delinquentem causa disciplinæ, non erit peccatum sed virtuosum.”—Quol. ix. a. 15. o.

Dominicus Soto has a similar division; only he divides the last class into two, according to the greater or less moral deformity of the action considered in the abstract. It may be of service to cite the passage: “In jure naturæ tres gradus discernuntur. Quædam enim sunt sicut prima principia, quæ intrinsece individuum et inseparabilem rectitudinem justitiæ includunt; quæ ob id indispensabilia sunt, ut præcepta decalogi. Alia sunt, quæ licet jure naturæ sint honesta, et eorum contraria inhonesta, nihilominus extrema necessitas boni communis potest ex jure ipso naturali mutare; et quod inhonestum erat facere honestum, ut dicimus de matrimonio fratrum (brother and sister) in primordiis mundi. Sed tamen illa extrema necessitate cessante, nulla lex humana potest illa mutare. Alia sunt in tertio gradu jure quidem naturæ honesta et eorum contraria inhonesta; quæ etiam citra extremam necessitatem propter honestas causas et fines, præsertim si ad bonum publicum spectent, possunt jura gentium, et civilia, et multo efficacius Ecclesiastica variare et mutare. Nam id quod ex mero jure naturæ inhonestum erat, potest per aliud bonum repensari et honestari. Imo et jus ipsum naturæ hanc mutationem persuadet. Nam natura integra omnia ut essent communia admonebat; quæ tamen corrupta persuasit, ut res per proprias possessiones distribuerentur et dividerentur.”—In 4. d. xli. Q. unica, a. 3. Soto, at the close of the passage refers to a special argument connected with the question of marriage within the prohibited degrees of affinity.

are so transformed by the surrounding circumstances, as to be taken out of the category of actions prohibited by the moral precepts. But what if a positive law should intervene with an additional prohibition? Then there cannot be a doubt but that a dispensation would be necessary; and such dispensation can be legitimately granted by any one of those from whom that positive law derives its living authority, or by those who have received delegated power from the former for this purpose.

ii. As regards secondary precepts, if the actions are of the second class, dispensation is impossible; if mixed and only natural law affects them, dispensation not required. If there is a positive law in the way, dispensation required.

This canon enables us to decide the question that arises concerning those *secondary* moral precepts, as they have been called, which are derived, as more or less certain conclusions, from the premisses provided in the Decalogue. For if these conclusions belong essentially to the commandments of the first table, or depend in such sort on those of the second that the addition of surrounding circumstances cannot alter their moral obliquity, no possible dispensation can exempt us from the prohibitory precept. If, on the other hand, the action is of such a nature that it can be, and is reduced to the moral order by the force of modifying conditions, and nevertheless a positive law should rise up to dispute its legality, a dispensation is at once necessary and admissible. If, moreover, the said positive law has been imposed by human authority, the same authority has the power of granting the dispensation.

2. As regards positive Divine law.

We next proceed to examine the question touching the lawfulness and power of dispensation as regards the merely positive law of God;—that is, as has been already explained, a law which makes actions, otherwise indifferent in themselves, to be right or wrong, because of its promulgation by Him Who is the supreme Legislator, and can therefore enjoin or forbid according to the good pleasure of His Will.

Three different meanings of the term, Divine law: used historically.

Here it must be observed at the outset that the term, *Divine Law*, may be used in three very distinct senses, and accordingly comprises three different kinds of law. For, in the first place, it may be understood *historically*. God may have established a certain law at a particular time in past history and for a particular people as well as for a particular purpose, which He may have afterwards Himself abrogated, when the ends were accomplished which He had in view. It may never have extended its sanction beyond certain limits; and it may now

only exist in the annals of the past. Yet by virtue of its origin we justly give to it the title of a Divine law, forasmuch as God was its Author. To say, then, that all Divine law is of perpetual obligation, or to deny that in any case a law which had once on a time been given by God, but has since then been abrogated by Him, and at present exists in the form of a human enactment, can become a proper subject of dispensation,—is either an anomaly, or a patent sophism. Yet it would almost seem as though Dr. Pusey had fallen into this not unimportant error. However we are evidently not concerned with this class of laws. For either they have been utterly annulled, carry their sanction with them into the grave, and consequently afford no occasion for a dispensation; or they have been restored to life by merely human legislation, which has taken the defunct law as its model. In this latter case they descend to the level of human enactments.

But the term, *Divine Law*, may also be understood *virtually*. Virtually.

For as the Catholic Church is the chosen temple of the Holy Spirit, and Her whole course of policy is directed by His guidance, Her laws may be regarded as in a certain sort Divine. And it is accordingly not uncommon to find them cited under that name. For this reason it is that S. Thomas, in discussing the question whether the Church could make consanguinity even in the fourth degree an impediment to marriage, pronounces that “as God does not join together those who are united contrary to the Divine precept, so He does not join together those who are united contrary to the precept of the Church, *which has the same obligatory force as the Divine precept.*”¹

Such a use of the phrase is not uncommon in the writings of the Fathers. Thus S. Basil, in his shorter rules, alludes in the following terms to the fasts prescribed: “It is of advantage to fast and eat according to a rule adapted to piety: that when it is right that a *command of God* should be perfectly observed by fasting (ὅταν μὲν ἐντολὴν θεοῦ διὰ νηστείας κατορθωθῆναι δεῖ), we should fast; and, on the contrary, when the command of God (ἡ ἐντολὴ τοῦ θεοῦ) requires food to strengthen the

So used by
the Fathers.

¹ 4. d. xl. Q. 1. a. 4. ad 1m.

body, we should eat.”¹ So, in like manner, S. Gregory of Nazianzus writes a letter in A. D. 382 to Celeusius during the season of Lent, as appears from the contents. In it he apostrophizes the person addressed in the following strain: “Thou actest wickedly, O judge, who fastest not. And how wilt thou observe human laws, *who despisest and countest for nothing those which are Divine?*” ((καὶ πῶς φυλάξεις τοὺς ἀνθρωπίνους νόμους, τοὺς θείου περιφρονῶν);² Once more; Innocent IV., in the second Council of Lyons, uses the same formula. “Since many,” he remarks, “from divers parts of the world gather together to the Apostolic See as to their Mother, we, attending with paternal solicitude to the common advantage and proficiency of them and of others also, have provided,—in order that their stay here may bear fruit,—that, for the future, the study of *Divine* and human law, *i. e.* of *canon* and civil law, should be professed, and should flourish,” (quod ibidem, de cætero, regatur et vigeat studium juris Divini et humani, canonici viz. et civilis).³

In laws virtually Divine man may dispense.

It is, however, clear enough that such precepts are not Divine in the strictly Theological meaning of the term; for the authority that has constituted them, however supernaturally directed, is still human. As man, therefore, has given to them the force of law, so man can dispense from their observance when occasion requires.

Formally.

But, lastly, the term is applied in its proper signification to statutes and precepts of which God is Himself the acknowledged Author, and which continue to oblige the conscience by virtue of an abiding Divine sanction. This may be called its formal acceptance; which includes accordingly the natural or eternal law, and all those commands which Christ has given to His Church, touching the Sacraments and the Creed. As we are at present occupied with the consideration of positive law, and have already passed under review the precepts of the natural law, our inquiry is restricted to the commandments of Christ.

In positive laws formally.

We conclude, then, from the principles already enunciated

¹ In regulis brevioribus, sec. cxxxix.

² Epist. exii. (aliter lxxiv.).

³ Cap. Cum de diversis de privileg. in 6.

and adopted as our necessary and sufficient guide throughout the whole of this question, that from the observance of such laws God, and God alone, can grant a dispensation, either Himself immediately, or by intervention of those whom He has *expressly* commissioned to do so in His Name. Accordingly S. Thomas observes that "the precepts of the Divine Law are no less obligatory than those of the natural law. Hence, as a dispensation cannot be granted" (by the prelates of the Church,—as we are entitled to assume from the nature of the objection to which these words are an answer,) "in the natural law, so in like manner it cannot be granted in the Divine positive law."¹ And again, in another place where he is expressly treating of the Pope's dispensing power, he gives the following incisive decision: "The Pope has plenitude of power in the Church to such extent, viz., that in the case of whatever has been instituted by the Church or by prelates of the Church, the Pope can dispense. For these are matters which are said to belong to human, or positive law. But he cannot dispense in what concerns Divine, or natural law, because such precepts derive their efficacy from their Divine appointment."² And, once more, in another place he tells us that no human custom can acquire the force of law, if it be against the natural, and against the Divine Law; because, as these proceed from the will of God alone, they can only be changed by His authority.³

ally Divi
God only
dispense

This opinion is all but universally maintained by the post-Tridentine Doctors, who seem to agree in considering it as theologically certain, spite of the authority of a certain few who maintain the contrary. De Castro Palao,⁴ who himself defends

This opin
theologic
certain.

¹ In 4. d. xvii. Q. 3. a. 1. q. 5. ad 1m.

² Quol. iv. a. 13. in c.

³ 1. 2æ. xcvi. 3. ad 1m.

⁴ "Quare solum de Pontifice movent questionem; an inquam, dispensare in hoc jure divino (scil. positivo) possit? In hac re, triplex est sententia. Prima affirmat in omni jure divino positivo, seclusis fidei articulis, posse ex causa gravi et urgente Pontificem dispensare. Sic Panormitanus, Felix, Decius. Secunda sententia limitat supradictam. Affirmat namque dispensare Pontificem posse non in omni jure divino, sed in aliquo; in eo, scilicet, quo majus Dei obsequium videatur esse dispensationem concedere, quam jus divinum integre observari. Sic docuit Cano, Sanchez. . . . Tertia sententia communis et verissima est. Affirmat in nullo jure positivo Divino posse Pontificem dis-

it with energy, declares that Theologians commonly hold it. Suarez must be ranked, not the least, among the number; and he quotes in its favour the authority of Soto, Ledesma, Cano, Catherini, Cajetan, Major, Almain, Salmeron, and, among the Canonists, Sylvester and Covarr.¹ To these we may add the name of Krimer,² which is not undistinguished in questions of Canon Law. La Croix adduces the opinion of some few Theologians that the Pope could dispense from the precepts even of the natural law, but adds "that most generally all the Doctors maintain the opposite. For we have no foundation for asserting such a concession. Nay, it is more probably maintained that not even God Himself can directly and properly dispense in the natural law. But God can change the matter or circumstances, and so cause that the act should no longer fall under the natural law." He further goes on to say that "Sanchez and others teach that the Pope can, by reason of a Divine permission, dispense in some impediments which are of positive Divine law. Others teach, on the contrary, that he can only authentically declare that God in this case and for this time permits what is done beyond the prescription of His law. But this seems to be only a question of words."³

We cannot say that we altogether agree with La Croix in considering the controversy, even as he puts it, to be a mere

pensare. Sic D. Thomas; quem communiter Theologi sequuntur."—*Opus Morale*, tract. iii. d. 6. punct. 3. nn. 3, 4. Palao has quoted Melchior Canus as a defender of the second opinion. It puzzles us to know why; since he has distinctly declared his approval of the third opinion; and so Suarez has justly ranked him. For the Dominican Doctor divides the Apostolic precepts into two classes; viz. 1^o those which the Apostles received from the immediate teaching of Christ; and 2^o those which they instituted by their own authority after our Lord's ascension into heaven. As regards these latter, this eminent authority asserts that the Pope has power of dispensation; but for what concerns the former, which alone are Divine, we quote his own words: "Div. vero Augustinus de legibus primi generis loquebatur, quas, si Christus ipse tulerit, ut quæ vere et proprie Divinæ et Evangelicæ sunt, nemo aut possit aut ausit immutare."—*De locis Theol.* l. ii. c. 18. resp. ad 4. It is however true that he suggests difficulties in the way of this opinion, connected with the subject of vows; without, however, determining either way.—*Relectio de pœnitentia*, parte 6, p. 405. Bassani, 1776.

¹ De Legg. x. c. 6. n. 7.

² Quæstiones Canonicae, tract. in L. iv. Decret. Q. ult. Parte 2a. q. 2. n. 2020. T. iv. Augustæ Vindelicorum, 1702.

³ Theologia Moralis, De matrim. L. vi. p. 3. dub. 4. addenda, Q. 108. n. 825.

matter of words. But, however this may be, the great preponderance of authority is in favour of the opinion of S. Thomas, that the Pope cannot legitimately give a dispensation from positive Divine law. The axiom of jurisprudents is fatal to such a claim. For it teaches us that he alone can dispense whose authority instituted, or gives a persevering sanction to the law; though he can, if it so please him, choose another to be his deputy. In Divine law, therefore, God alone can dispense; nor can the Supreme Pontiff do so, unless that power has been avowedly conceded to him by the Supreme Lawgiver. But if the advocates of the opposite opinion claim the dispensing power for the Pope on such a plea, the whole question resolves itself into a matter of fact. We content ourselves with asking for the proof.

If, finally, it be a question of human law, whether Ecclesiastical or civil, the answer is easy. The Supreme Pontiff can dispense in all cases of Ecclesiastical law, and he alone. This he can do either immediately himself, or by means of others to whom he has delegated his power. In merely civil law the supreme authority in the State, either personally or by delegation, can alone legitimately give a dispensation.

3. In human laws, ecclesiastical and civil, human authority can dispense.

To sum up, then, briefly the conclusions at which we have at length arrived, we say, following the commonly received opinion of the Catholic Schools, that

Summary of the whole inquiry.

i. No one,—not even God Himself, can, properly speaking, dispense from the observance of the natural or eternal law.

ii. No one, in like manner,—not even God Himself,—can dispense in any way with the observance of the moral precepts contained in the first table of the Decalogue.

iii. No one, in like manner,—not even God Himself,—can, properly speaking, dispense from the observance of the moral precepts contained in the second table of the Decalogue.

iv. No human authority,—not even the Pope,—but God only, can subtract an action, forbidden by the precepts of the second table, from the legal prohibition, and so legitimize it.

v. No human authority whatsoever, Ecclesiastical or civil, can dispense from an observance of the positive Divine law. Such a power belongs to God alone.


vi. The Supreme Pontiff can grant a dispensation in every case of merely Ecclesiastical law.

vii. In the case of actions which of their nature involve an essential inordinateness and difformity from the natural law, such as no attendant circumstances can change, no dispensation is admissible.

viii. In the case of actions which, in themselves, involve a considerable inordinateness and impropriety, but such as to be capable of being reduced to order in the concrete by a conjuncture of circumstances, dispensation may be allowed, though rarely, by human authority.

ix. In the case of actions which, of themselves, include a certain inordinateness or impropriety, as verging on the limits, so to speak, of the natural law, but which can, not unfrequently, be reduced to the right order in the concrete by virtue of surrounding circumstances, dispensation may be more easily and less unfrequently conceded.

x. We may add,—to complete the statement, though we have not as yet touched on the point,—that the Pope, as supreme dispensing Power, has alone the right to judge and determine concerning the expediency of granting a dispensation in any case falling under the last two categories. He is accountable to God alone for the due exercise of his authority.



THE ISSUE.



THE ISSUE.

CHAPTER I.

THE LEVITICAL PROHIBITIONS; OR AN EXAMINATION OF THE INTRINSIC EVIDENCE BEARING UPON THEIR RELATION TO THE NATURAL LAW.

WE have now,—to adopt a nautical phrase,—cleared the decks, and are ready for action. These preliminary notions were absolutely necessary, in order to enable the reader to have an intelligent appreciation of the discussion on which we now enter.

The statement of Dr. Pusey's difficulty about Papal dispensations within those degrees of consanguinity and affinity wherein marriage is prohibited by the Levitical law, is not limited to that cursory allusion to it which is made in the Eirenicon. To do him justice, it had occupied his attention twenty years before, in connection with a branch of the subject which then excited, and still continues to excite public attention, not only by reason of its decidedly practical issues, but likewise because persevering efforts have for a long time been made, by persons of influence and position, to obtain an amelioration of the law on this particular point. He was one of those who gave his evidence before Her Majesty's "Commissioners appointed to inquire into the law of marriage as relating to the prohibited degrees of affinity"; and he deemed his own evidence as of such value to the view, or interest, which he represented, that he published it separately with an introductory preface. This preface occupies about a third of the whole volume; and if we make abstraction of

Dr. Pusey discusses this question of prohibited degrees at length in his published evidence before the commissioners with reference to marriage with a deceased wife's sister and in another pamphlet.

Mr. Badeley's speech printed in an appendix, is longer than the evidence itself. It is chiefly made up of animadversions upon the evidence of other witnesses, who had maintained opinions opposed to their reviewer.

Examination of these works proposed.

As the object of this essay is to place the teaching of the Catholic Church on the whole question concerning these matrimonial impediments, more particularly in their relation to the Papal prerogative, clearly and fully before the reader, and at the same time to examine into the opposing theory put forward by the Oxford Professor, as well as the weight of those arguments by which he has endeavoured to establish it, we thought it would be most conducive to this end, if we assumed his chief work on the subject, together with a pamphlet published by him of minor value, as the groundwork of our inquiry;—a course the more convenient to pursue, since we are in reality occupied with his first difficulty in the way of accepting the dogma of Papal Infallibility.

Peculiarities of Dr. Pusey's controversial style; instances, with running comment.

It is with no little pain that we feel ourselves again compelled to signalize, for the public benefit, the peculiarity of Dr. Pusey's controversial style. He assumes, throughout the preface to which we have recently alluded, a tone of lofty superiority, which, under the circumstances, was,—to say the least,—premature. Statements of Cardinals, Catholic Bishops and Theologians, and of ministers of deserved reputation in Protestant communions, are dismissed with a sententious phrase or so, which on analysis resolve themselves into a mere *ipse dixit*,—valuable perhaps in the eyes of those who accept his bare authority as their only determining motive of assent, but scarcely satisfactory in the judgment of those unbiassed inquirers who are on the look-out for intrinsic evidence of truth. His sentences roll on with such judicial authority and stern reproof of those witnesses who have the misfortune of not being able to see the question from Dr. Pusey's particular point of view, that we are naturally led to anticipate with bated breath some one or other of those introductory phrases, with which our readers are familiar in the prophetic writings. We seem to see in large type, "The word of the Lord came to me, saying"; or "The burden of the word of the Lord to Catholic prelates and nonconformist ministers by the hand of the

Doctor." Little short of this can satisfy the exigencies of the case, or explain those unimpassioned scoldings with which the said preface teems. We will venture to put a specimen or two in evidence, with a running comment by way of ornamental setting. Thus: "It is, in truth, a very remarkable part of our probation as to Holy Scripture also, that persons may escape almost any argument or authority from Holy Scripture, if they *will*."¹ Now, to say nothing of the obscurity attaching to the first clause of this sentence,—if we couple the significant italicizing of the last word with the subsequent explanatory context, in which the *will* is again italicized to give greater point to the sermon, and then remember that in the immediately preceding context one of the witnesses, a reverend gentleman, is mentioned by name and obviously gives occasion to the subsequent reflection, have we not a right to protest against so unseemly a style of controversy?

Take, again, an instance of a different kind: "Already we are told 'that among the Roman Catholic laity in England, the question as to these marriages is regarded as one of Ecclesiastical discipline.'"² Why, of course they are; and among Catholic Theologians also. This is precisely the point between us. But Dr. Pusey is so astonished that he takes care to inform us, in a note subjoined to this passage, that the statement is made "on the authority of two, one 'a distinguished' Roman priest." Well, if he desired it, he might have the authority of as many thousands; for it may be safely said that there has not been a Catholic book of Moral Theology for the last three hundred years which has not inculcated the same truth.

So, in another place: "Of those who deny the binding force of the Levitical decrees, Bishop Wiseman has a remarkable position to maintain,—that these 'marriages are disapproved of in the Mosaic law, but not on that account contrary to the Christian law.'"³ Why "Dr. Wiseman" is peculiarly obliged to maintain this position, it is difficult to understand; nor is it more easy to see why its maintenance

¹ Marriage with a deceased Wife's Sister prohibited by Holy Scripture, &c. —Preface, p. xxii.

² P. xxiv.

³ P. xxiv.

should be considered so remarkable now, when one bears in mind that a very similar judgment was practically enforced by the Apostles in the first Council of Jerusalem? The fact is, that Dr. Pusey's *remarkable position* is simply the ordinary teaching of Catholic Theology.

Again: "Mr. Tyler (whose name it is a deep subject of regret to have to name in connexion with such a view of the subject) ventures deliberately to state"¹—what? Simply an opinion which is the common teaching of Catholic Theologians, as we shall see in the sequel.

In like manner in a note at the foot of a page, he imagines that he is putting another witness,—a clergyman of his own communion,—out of court by a sort of prosyllogism. He says, "The Rev. J. B. Owen (forgetting, as it seems, Art. VII. 'No Christian man whatsoever is free from the obedience of the commandments which are called moral') calls it 'part of the *moral* law of a peculiar people under peculiar circumstances.' What these are, he does not hint."² But the real fact is, that the witness is a much better Theologian than his critic. Dr. Pusey seems to know nothing about the nature of the judicial precepts in the Levitical law, which were precisely part of the moral law (in that wider sense explained in a preceding chapter), of a peculiar people under peculiar circumstances, and have been described as such for centuries by Doctors of the School. The quotation from the Articles does not even near the point in debate; and, therefore, the Rev. Mr. Owen might fairly charge his adversary with an *ignoratio elenchi*.

Yet again: "It is easy to select and dispute about the meaning of a verse, but let any man, with earnestness of mind, read the solemn words wherewith those prohibitions are prefaced and concluded (Levit. xviii. 1-5, 24-30), and then, I trust, he would not dare to say, that what is included therein is not forbidden by God Himself, as being against the law of nature."³ It is charitably to be hoped that some few Catholic Theologians have read these verses of Leviticus with earnestness of mind; and yet, for five hundred years at least, as we shall see, there have been great names among them who have maintained that

¹ Preface, p. xxv.

² P. xxv. note.

³ P. xxviii.

the prohibitions, recorded there, do not, for the most part, belong to the natural law. For above three hundred of those years there is hardly to be found one Catholic Theologian or Jurist, who has not supported the same opinion. The Church has virtually confirmed it by Her infallible voice, in the Ecumenical Council of Trent; and for ourselves,—if we may venture to appear at the bottom of such a catalogue,—after having made a careful examination of the text and of the few arguments with which Dr. Pusey has surrounded it, we propose with due *earnestness of mind*,—at least such is our hope,—to defend its truth to the best of our ability.

So, in another place we read: "Without any disrespect to individuals, one cannot but regret that they should on such an occasion have given an opinion upon subjects which it has not fallen within their line of duty to investigate. It is no blame to a person not to know what was the judgment of the early Church upon any given point, if he be not called upon to know it; but when a very grave, moral question is to be decided, it is a moral wrong to give any unconsidered opinion which may in any way influence it. The effect of the little which is said upon this subject is but to obscure the truth."¹ What does all this mean, if not to fix the stigma of a *moral wrong* on all the witnesses who, in the exercise of their private judgment, have formed another idea of this early Church of Dr. Pusey from that which he has formed, in the exercise of his?

Once more: "There is yet another witness" (Bishop Wiseman) "whose evidence it is necessary to notice, as likely to perplex English readers, not because he is not acquainted with the subject, but because he can only bring himself to speak of it as it is in his own mind."²

Finally: "Such is the sum of Bishop Wiseman's answer as to the Church's dispensations. An imperfect account of one act of Gregory the Great is all which he tells of the whole history of dispensations in the Christian Church. To what is this semblance of saying something, and really saying nothing, which bears upon the Commissioners' question, to

¹ P. xl.

² P. li.

be attributed, but an unwillingness either formally to set aside the teaching of the whole Church or to acquiesce in it?"¹ As though private dispensations were likely things to find their way into the writings of the Fathers, or into the then rare works on Ecclesiastical history! as though one example, in matter so serious, were not enough to establish the Church's judgment concerning the lawfulness of the practice! as though the Church's living tribunal cannot modify Her Ecclesiastical laws or customs! as though, in different ages and under different phases of society, dispensations might not now be very rare, now again, from prudential considerations, more frequent! The fact is, that Dr. Wiseman was cautious and reserved in his evidence, because he was thoroughly conversant with his subject. We cannot doubt that the personal observation in the last sentence of this passage will be condemned by the good taste of every one who reads it.

Such style of controversy out of place in grave Theological or Philosophical inquiry.

Now it is true that, in certain kinds of rhetorical discourse, we are encouraged by the authority of the Philosopher to make use of those ethical and pathetic instruments of persuasion which tell so effectively upon a popular audience. But the same authority would teach us, that they are singularly out of place in scientific discussions where conflicting theories confront each other, and the verdict of the wise and prudent will be given according to the weight of extrinsic and intrinsic evidence. But we more than doubt whether that assumption of personal infallibility to which we allude would be allowed a place by Aristotle, even in his *ἠθικὴ πρῶτη*. It was necessary to call attention to this painful dogmatism, because, though it will have no other effect on men of discernment than to awaken their suspicion, yet on those who are incapable of thinking for themselves, and are therefore driven to rely on others for the selection of their opinions, its results may be most deleterious.

The main point in the question—the prohibitions in Levit. xviii.—proposed for discussion.

We gladly pass from this ungrateful duty to the main subject which will now occupy these pages. The one great question, which lies at the root of the whole discussion, is this: Do the prohibitory statutes, contained in Leviticus xviii.,

¹ Preface, p. lxxv.

the transversal line to the fourth degree inclusive. And this is solely according to Ecclesiastical institution."¹

It may be as well to add that Durand of S. Porçain, in the Diocese of Clermont, (that 'most *resolvent*'² Doctor of the Dominican school), holds the same opinion as Peter Auriol, but gives clearer expression to the latter's theory with regard to the Divine Law, by adding that it includes not only brother and sister, but "*the rest who are in the first degree.*"³

DURAND OF S. PORÇAIN, to be classed along with Auriol.

We now summon before us the representative of another school of opinion. Thomas of Strasbourg, or (as he is more commonly designated), Argentina, the Latin name for the German city, was an Augustinian, and in A.D. 1345 was appointed General of his Order. He died in Vienna, A. D. 1357.

ii. THOMAS OF STRASBOURG (Argentina).

The following is taken from his Commentary on the Sentences :

Extract from his writings.

¹ "Dico tunc quod quædam est cognatio quæ impedit de jure naturæ; sicut ista quæ impedit secundum lineam ascendentem et descendantem, ut filius cum matre vel avia, et deinceps, vel pater cum filia vel nepote; quapropter antummodo potest contrahi matrimonium inter personas in linea transversali; et hinc est quod non posset hodie Adam contrahere cum aliqua, si viveret.

"Aliqua autem cognatio impedit de jure divino, qualis est inter personas qui [sæ?] habitant simul, cujusmodi sunt frater et soror; et hoc quia propter continuam cohabitationem fuisset excessus inter tales et deordinatio magna, nisi prohibitio interveniret; quædam autem cognatio impedit solum de jure positivo, qualis est inter personas in linea laterali usque ad quatuor gradus; et hoc est tantum ex statuto Ecclesiæ."—In 4 Sentt. d. xl. Q. 1. a. 1. T. ii. Roma, 1605. B. M. Dr. Pusey quotes the same passage from dist. 40. q. un.

² We must be excused for coining a new word in our translation of "*Doctor resolutissimus*," as there is no word in the English language to express the phrase. The common translation '*resolute*' does not give us even a glimpse of its true meaning, which is, that Durand was addicted to the solution of intricate problems, or, as one might say, was the great Unraveller. "Tanta vero difficillimarum quæstionum, dubiorumque, quæ tum innumerum in modum agebantur, resolutione ingenii acumen et philosophiæ Scholasticæ præstantiam demonstravit, ut doctor resolutissimus dici mereretur."—Brucker, T. iii. c. 845. (Per. ii. Pars ii. L. ii. cap. 3. sect. 2. § 36). Durand was made Bishop of Puy in A.D. 1318, of Meaux in 1326, and died in 1333.

³ "Quantum ad secundum dicendum est, quod consanguinitas secundum lineam ascendentium et descendantium impedit de jure naturali matrimonium quoad omnem gradum. Consanguinitas vero secundum lineam collateralem impedit de jure divino matrimonium in primo gradu, puta inter fratrem et sororem, et cætera primi gradus, ut patet Levit. xviii.; sed de jure positivo impedit usque ad quartum gradum inclusive."—In 4 Sentt. d. xl. a. 1. n. 9. folio 386, col. 4a. Venetiis, 1571.

that the prohibitions belong to the natural law; his argument requires this.

first passage, just cited, that these precepts are immutable, because they belong to *the* moral law. Now the very use of the definite article would seem to intimate that he is referring to the eternal or natural law; even if we could otherwise suppose him capable of supporting the absurdity, that every law which bears on man's responsible action, or is the particular and partial application of a moral principle, is *ipso facto* unchangeable;—that, for instance, capital punishment for sheep-stealing, as being a special application of the seventh commandment, is incapable of repeal. But no one,—ourselves; least of all,—would dream of imputing such gigantic folly to this distinguished Professor. Everything, therefore, conspires to convince us that he professedly vindicates for these special laws of marriage and of sexual intercourse a place in the eternal law of God. If he does not intend to assert this, our preceding chapters render all further discussion idle and unnecessary; for it is plain that, any on other hypothesis, they are as open to the exercise of a legitimate dispensing power as they are capable of repeal.

The catalogue of precepts as given in the Vulgate.

We will begin, then, by setting these precepts in full before the reader, as they stand in the Vulgate.

LEVITICUS XVIII. vv. 6—18.

OMNIS HOMO AD PROXIMAM SANGUINIS SUI NON ACCEDET, UT REVELET TURPITUDINEM EJUS. EGO DOMINUS.

TURPITUDINEM PATRIS TUI ET TURPITUDINEM MATRIS TUE NON DISCOOPERIES: MATER TUA EST: NON REVELABIS TURPITUDINEM EJUS.

TURPITUDINEM UXORIS PATRIS TUI NON DISCOOPERIES; TURPITUDO ENIM PATRIS TUI EST.

TURPITUDINEM SORORIS TUE EX PATRE, SIVE EX MATRE, QUÆ DOMI VEL FORIS GENITA EST, NON REVELABIS.

TURPITUDINEM FILIÆ FILII TUI VEL NEPTIS EX FILIA NON REVELABIS; QUIA TURPITUDO TUA EST.

TURPITUDINEM FILIÆ UXORIS PATRIS TUI, QUAM PEPERIT PATRI TUO; ET EST SOROR TUA, NON REVELABIS.

TURPITUDINEM SORORIS PATRIS TUI NON DISCOOPERIES, QUIA CARO EST PATRIS TUI.

TURPITUDINEM SORORIS TUÆ NON REVELABIS, EO QUOD CARO SIT MATRIS TUÆ.

TURPITUDINEM PATRUI TUI NON REVELABIS, NEC ACCEDES AD UXOREM EJUS, QUÆ TIBI AFFINITATE CONJUNGITUR.

TURPITUDINEM NURUS TUÆ NON REVELABIS, QUIA UXOR FILII TUI EST; NEC DISCOOPERIES IGNOMINIAM EJUS.

TURPITUDINEM UXORIS FRATRIS TUI NON REVELABIS; QUIA TURPITUDO FRATRIS TUI EST.

TURPITUDINEM UXORIS TUÆ ET FILIÆ EJUS NON REVELABIS. FILIAM FILII EJUS, ET FILIAM FILIÆ ILLIUS NON SUMES, UT REVELES IGNOMINIAM EJUS; QUIA CARO ILLIUS SUNT, ET TALIS COITUS INCESTUS EST.

SOREM UXORIS TUÆ IN PELLICATUM ILLIUS NON ACCIPIES, NEC REVELABIS TURPITUDINEM EJUS, ADHUC ILLA VIVENTE.¹

Dr. Pusey's arguments in support of the proposition which he has under taken to defend, may be reduced to two classes. They are partly *intrinsic*,—derived, that is, from an examination of the passage itself and its context; partly *extrinsic*,—founded, that is, upon authority.

Dr. Pusey's arguments, partly *intrinsic*, partly *extrinsic*.

The intrinsic arguments,—for these we shall examine first,—may be divided into those which are derived from an examination of the text itself and its constituent clauses; those, again, which are based upon the context; and those, lastly, which are borrowed from other passages of Holy Scripture that bear upon the same subject.

The intrinsic arguments of three kinds, from the text itself—from the context—from other parallel passages of the Bible.

We begin with the arguments connected with an examination of the text itself. Dr. Pusey opens ground with the following commentary on the sixth verse, which runs thus: "No man shall approach to her that is near of kin to him. . . . I am the Lord." "It stands," he writes, "as one broad principle of Divine legislation, one all-comprehensive law, forbidding all carnal knowledge, whether under plea of marriage or out of marriage, of any who are near of kin. It stands as one great moral law, involving in itself the principle upon which it is founded, like those great moral laws of the Decalogue. It is

1. Arguments founded on Levit. xviii. 6—18.

i. The general precept in the sixth verse examined.

Dr. Pusey considers it a general enunciation of a dictate of the natural law.

¹ That the reader may have the degrees of consanguinity and affinity which are distinctly prohibited in the Levitical code under his eye, together with those which are not so prohibited, we give in the Appendix trees of consanguinity and affinity, in which the degrees expressly named in the above catalogue, are printed in capitals. (Appendix B.)

a law of the same breadth and largeness and expansiveness, as, 'Thou shalt not murder,' 'Thou shalt not commit adultery,' 'Thou shalt not steal.' There is no ambiguity in the prohibition. One only question can be asked, 'Who is my near of kin?'"

The reason for this assertion. It is a law of a like measure in its structure to those of the Decalogue.

If we naturally enough inquire, after a careful perusal of this string of assertions, why the precept in question "stands as one great moral law, involving in itself the principle upon which it is founded,"—supposing these mysterious words to mean, that it bears on its front the characteristic notes of the natural law,—the only perceptible answer given in the text, apart from the writer's own expression of belief, is, that it is a law of the same "breadth, and largeness, and expansiveness" of structure as the commandments of the Decalogue; and, secondly, that there is no ambiguity in the prohibition.

Application of this canon to another Levitical law, plainly ceremonial;—*reductio ad absurdum*.

Well, let us apply these canons of criticism to another law, which stands in the midst of a precisely similar string of precepts to what we find in this chapter of Leviticus. Thus is it written: "I am the Lord your God, who have separated you from other people. Therefore do you also separate the clean beast from the unclean, and the clean fowl from the unclean; defile not your souls with beasts, or birds, or any things that move on the earth, and which I have showed you to be unclean. You shall be holy unto me, because I, the Lord, am holy."

Equal breadth of, and less ambiguity in, the ceremonial law, than in the prohibition of v. 6.

The latter ambiguous, a. by reason of the list; b. in the expression "near of kin."

There is surely here a breadth, largeness, expansiveness of structure as marked as in the former case. The Israelites are to separate themselves from unclean animals, as in the other precept they are enjoined to abstain from marriage with their near of kin. As for the matter of ambiguity, there is less of it in the second instance; for the subsequent list of prohibitions is complete, whereas Dr. Pusey earnestly contends that the list of prohibited degrees is anything but complete. He justly remarks that, on reading the general prohibition, the question at once confronts us, Who *are* near of kin? And why so? Patently, because the word, *near*, is unusually ambiguous, and consequently needs to be accurately defined. Yet the subsequent precepts do not supply the need. We

¹ God's Prohibition of Marriage with a deceased Wife's Sister, p. 4. Oxford, 1860.

have it on the authority of well-known and distinguished Hebraists¹ that the phrase, ~~וְהָיָה כִּי יִשְׁכַּח~~ *near, or of his flesh*, relates to nearness of consanguinity exclusively, while Dr. Pusey protests that it includes the nearness of affinity as well. Here is another fundamental ambiguity, which seriously affects the supposed relation of this to the subsequent precepts. It must be owned that if we are to test the two precepts by absence of ambiguity, the one directed against the use of unclean animals has the best of it.

There is reason to suppose it only applies to consanguinity.

Of course we do not wish to have it supposed that there is not, in the law which has served us for a parallel, something,—apart from the intrinsic difference of subject-matter,—which clearly distinguishes it from the precept now under our consideration. No one can fail to see that the latter is a judicial precept, even on our own showing; whereas the former is plainly ceremonial. Besides, there is, in the precept concerning unclean animals, a special allusion to the segregation of the elect people from surrounding nations, which is prefixed, as if causally in some measure, to the subsequent law; though it might plausibly be maintained that a similar reference is,—to say the least,—implied in the five verses preceding the famous text of Leviticus. But all this is beside the question; for what we are maintaining now is, that the parallel is complete, if we measure the two by the canons with which Dr. Pusey has supplied us.

A marked distinction between the two laws; but not on the point to which Dr. Pusey's canon applies.

Universality, then, breadth of inclusion, brevity of absolute command, are no proofs that a particular precept forms part of the natural law. No criterion could be more unsafe. Such properties argue, at the most, that a precept has the external bearing of a general principle; but whether it is to be ranged under natural or positive law, they afford no satisfactory means of determining. As regards the particular case before us, we should be inclined to maintain that the general prohibition

The canon must be rejected.

The view of prohibition in v. 6.

¹ See Gesenius, under the word, ~~וְהָיָה~~, n. 2, and Dr. Davidson's Introduction to the Old Testament, Book of Leviticus, ad locum. It is elsewhere used of consanguinity. Cf. vv. 12, 13. Levit. xx. 19; xxi. 2; xxv. 40. Numbers xxvii. 11. See also Appendix C.



given in the sixth verse,—like the particular ones that immediately follow,—is a judicial precept, resting indeed on an immutable principle of the natural law and, to a certain extent, participating in its special attributes, but adapted to the peculiar circumstances of a peculiar people. Considered in this light, the sixth verse presents us with a general preamble to the particular precepts given in the verses that follow, and explicative of them.

i. Examination of the subsequent catalogue.

Further illustrations of Dr. Pusey's style.

But it behoves us to pass on to another point in our examination of this text, which tells with considerable force against Dr. Pusey's assumption. We allude to the catalogue of prohibited degrees presented in the verses subsequent to the one which has been under discussion. It is, as an ordinary rulo, easy to discover when the Oxford Professor,—to use a phrase common among Geologists,—has found a fault in his diggings; for we are usually arrested by an upcrop of moral interjections, such as we noticed at the beginning of this chapter, which cannot fail of calling attention to the spot. So now we are warned off the sacred enclosure,—if it may be allowed us to use another metaphor,—by the thunderings and lightnings of Mount Sinai. Listen, gentle reader; but be not afraid: "Let not any one, as he loves or reverences the law or truth of God, urge first the one, then the other. To urge objections, inconsistent with each other, shows that a person's object is, not to ascertain the truth, but to get rid of that against which he urges them."¹ Again: "Whenever the human mind has a strong repugnance to submit its reason, or to yield its obedience, to the revealed mind of God, its common resource is, to take up objections, it matters not whence, to urge one, until it is answered, then to take up another, and when that is answered, to recur to the first, carrying on a sort of desultory warfare, urging objections which really answer one another, each conceding a portion of the truth, each denying what the other concedes, hiding the truth from itself by the dust which it raises, and holding that the truth is invalidated, simply because objections can be raised against it."² Once more, and this the last: "Now scarcely any of

¹ God's Prohibition, &c., p. 2.

² Ibidem.

those who, in England, employ this argument, can have considered what it would lead to."¹

Well, as we have become accustomed to those flags of danger, we shall fearlessly pursue the path which Dr. Pusey warns us to avoid; and enter upon it, by an exposure of the practical bewilderment into which the exigency of the Professor's position has plunged him, on the very point on which he is reading these alarming homilies to others.

The Levitical law, as promulgated in this chapter, is Dr. Pusey's citadel. Nevertheless the general principle, contained in the sixth verse, is confessedly vague; for, as Dr. Pusey owns, it suggests the question, who is near of kin? The only authoritative, because Divinely-revealed answer must be sought in the subsequent prohibitions. But these are, on Dr. Pusey's theory, incomplete, and fail in proscribing marriage within that particular degree of affinity, for which he has expressly invoked them. Accordingly, in all but juxta-position with the sentences just quoted, comes the sad, but inevitable confession, "On what ground it pleased God to enforce specifically certain cases, and not by name to enforce others which still remain forbidden" (in Dr. Pusey's judgment) "under the general prohibition, we cannot say."² However, he essays some sort of an answer in his perplexity: "It may be," he writes, "that there was some special temptation to those sins which He forbade by name."³ But then his better judgment admits the futility of his own hypothesis, and, with a candour that does him credit, in the very next sentence he throws a shell into the midst of his newly-constructed defences by owning that "certainly sins are specifically forbidden to which we should have thought there would be no temptation, that with a man's own mother."⁴

Dr. Pusey's question, who is of kin? must find its answer in the subsequent prohibitions.

But these confessed incomplete

We shall presently offer our readers a probable solution of the difficulty, which, at all events, will not require in the next sentence a retraction. At present we are concerned with Dr. Pusey's exegesis. What is his view of this catalogue of prohibitions? Does he consider it complete?

It is, as usual, a task of some difficulty to arrive precisely

Dr. Pusey's explanation

¹ P. 10.

² P. 11.

³ P. 11.

⁴ Ibidem.

at his meaning when he gives us his answer. These are his own words: "The prohibition (Levit. xviii. 6), was complete and absolute, including those near by marriage, as well as by blood. In itself, it might have been thought to have included more than are actually forbidden by it. For in the other place where the words 'flesh of his flesh,' occur, they extend beyond the uncle. And so while, on whatever ground, God has enforced some prohibitions specifically and by name, He, at the same time, in order to lay no burden too grievous to be borne, defined by the instances mentioned, the principle of what He meant by nearness. Else 'nearness of kin' could hardly have been understood not to have included the children of brothers and sisters. Certainly, its limits could not be contracted, without giving up the idea of nearness of kin altogether."¹

We confidently ask whether any one, with whatever care he may have read and re-read these words, can honestly say that he has caught their precise drift? Remember, that it is a most important element in the inquiry to fix determinately the respective relations of the general prohibition given in the sixth verse, and of the specific prohibitions given in the subsequent verses, to Jewish observance in the Divine intention. For, if the Sinaitic legislation on this matter forms part of the natural law, the Jew would be obliged to the observance of all that was included in the general precept; if he was only obliged to keep the particular precepts, the additional prohibitions in vigour among Christians could not belong to the natural law, which is immutable, and, by parity of reasoning, many of the express Levitical prohibitions could not belong to it either, seeing that they refer to relationship or affinity in the same degree, and sometimes even more remote than those which are dealt with in the former. But if the Jew was bound to the observance of all which Dr. Pusey supposes to be included in the general precept, what sense are we to attach to his words when he tells us that God "defined" the general principle by these instances "in order to lay no burden too grievous to be borne"? Why, the

¹ God's Prohibition, &c., p. 16.

burden would be increased, rather than diminished, by a reticence of this kind in a matter of necessary obedience. If he were not bound to such observance, then we may bid a last farewell to Dr. Pusey's theory; *mole ruit sua*.

In his evidence he is much clearer; because the Commissioners pressed him on this particular point. We quote the questions, and his answers:

It is clear in his evidence before the commissioners;—extract from it.

"Are you to be understood as coming to the conclusion, that, by virtue of the whole of that chapter, it is sufficiently clearly pointed out that marriages of this description were intended to be prohibited; that is, marriages within the prohibited degrees of affinity?—I hold, as the Church of England does, that both the specific instances given under the general prohibition . . . and those which are equal to those instances, and which are like in principle to those instances, are prohibited. . . .

"And you consider that it is not only what is there specifically mentioned, but everything *ejusdem generis*, and that those marriages are *ejusdem generis*?—Yes.

"That is a fair exposition of your opinion?—Yes; and that view is absolutely necessary, because marriage with a daughter is not mentioned there, neither a daughter nor a grandmother, nor grandfather's wife. Marriage with a daughter is manifestly against the law of nature; and since incest with a daughter, as well as with a mother, was even a common sin among some heathen nations, and has even occurred within Christianity, it cannot be argued that it was omitted solely because unlikely to happen. We cannot see the principle upon which one case has been mentioned, another not. . . .

"Then you infer, because there are certain marriages not expressly prohibited, which in the feeling of the whole Christian world are wrong, that these marriages by affinity are *ejusdem generis*?—No. What I infer is, that since what is plainly against the law of nature, since manifest incest is omitted, therefore it cannot be argued that those specific instances are all which were meant to be prohibited."¹

We have here at last something like a definite expression

Examination of the explanation

¹ Marriage with a deceased Wife's Sister: Evidence, nn. 429—432.

of opinion ; and even the vital question of Jewish obligation, though not expressly settled, nevertheless admits of but one solution, if we assume for our premisses the propositions which are conspicuous in these answers. But then, in proportion to the witness's definiteness, his statements become more open to objection. For,—to begin with,—Dr. Pusey would seem to rest the main justification of his belief that the catalogue of prohibitions is designedly incomplete, on the supposed omission of incestuous connection between father and daughter. But the fact of such omission is, at the least, not altogether certain. The first clause of the seventh verse, “*Turpitudinem patris tui non discooperies*,” as one might think, explicitly covers it. Dr. Pusey apparently agrees with those who consider that clause as merely explanatory of, or introductory to, the subsequent prohibition ; and Dr. Davidson, in his learned and useful “*Introduction to the Old Testament*,” adds the weight of his authority to such a view. But, with all respect for those who hold to this opinion, there remains the great difficulty, to our mind, that, so interpreted, the text presents us with a most unnatural collocation of phrases, opposed to the construction of the other prohibitions. There is something, it is true, that resembles it in the fourteenth verse ; but the likeness is more apparent than real, as may be seen on closer examination. Moreover, the supposed explanation or reason, given in the phrase according to such a reading, seems altogether unnecessary in a case where the two ideas are equally abhorrent to the natural instinct. So much for the intrinsic reasons against the rendering. There is, besides, grave extrinsic authority in favour of the daughter's inclusion in the catalogue. Knobel defends it, and quotes Jonathan in the Targum.¹ Among Catholic Commentators and Theologians, the majority that we have consulted maintain this opinion. We may mention, among others, Cornelius à Lapide,² Laurence Beyerlinck,³ Menochius,⁴ Sanchez,⁵ and Malvenda,⁶ (who mentions the other interpretation, only to reject it), besides many

jections
it.

It is not
to certain
the
ghter is
itted
in the
atalogue.

¹ Ad loc.

² Ad loc.

³ *Magnum Theatrum Vitæ humanæ*, sub voce *Cognatio* ; t. ii. Lugduni, 1679.

⁴ Ad loc.

⁵ *De Matrimon.* l. vii. d. 52. n. 1.

Biblia Sacra, ad loc. Venetiis, 1747.

who do not explicitly treat the point, but implicitly favour the same opinion.

There are two philological reasons, however, given against the supposed inclusion of the daughter in this verse. One is that the suffix in the disputed clause is masculine, *אֵלֶּיָּהָ*. The second is that, throughout these particular precepts, the subject of the prohibition is a male; for the verb is in the second person masculine. Both of these arguments are of great weight; but more especially the latter. The former depends for its validity on the amount of faith we put in the Masoretic points. But they certainly embody the Rabbinical tradition; and there seems no reason for suspecting them in those passages which do not directly bear upon the coming Messias. These arguments seem to be so cogent, that, spite of the difficulties just mentioned, we are inclined to Dr. Pusey's opinion. We refer our readers to some valuable notes on this, as on other questions connected with Leviticus xviii., which have been kindly provided, in answer to our doubts, by Mons. le Chanoine Lamy, Rector of the College Marie Terèse, and Professor of Scripture in the University of Louvain. They will be found, with the author's questions, in the Appendix.¹

But the point is of comparatively slight importance to the main question. For we do not deny that the Levitical catalogue is imperfect so far as this, that two cases are omitted which are virtually contained in the others, and made known to the Jews by the authorized teaching of their hierarchy. There is no doubt that marriage with a man's own sister is not explicitly mentioned. There is a wide difference, however, between such an opinion, and that which supposes the particular cases mentioned to be little better than mere specimens.

But a yet more considerable difficulty arises out of Dr. Pusey's evidence. For in one degree of consanguinity at all events,—and that of prominent importance, only two removes from the stem,—it is historically certain, that the omission of the prohibition in the Levitical catalogue was always considered by the Jews as equivalent to a tacit permission of such marriage. We allude to the relationship of uncle to niece. Fortunately, we have Dr. Pusey's expressed opinion about this

3. The marriage between uncle and niece permitted

¹ Appendix C.

omission; and it is only just to say that it is altogether consonant with the principles laid down in that portion of his evidence which we have just quoted. For he says, "Few Englishmen would think, that when God prohibits to Christians marriage with an aunt, He allows to them marriage with a niece. Yet the marriage with the niece is only forbidden by the general prohibition of marriage with all near of kin."¹ According to him, therefore, the marriage of an uncle with his niece was intended by God to be prohibited under the general sanction of the sixth verse, and forms part, consequently, of the natural law. Being such, the prohibition was of eternal obligation; and, while it bound the Gentiles, so also did it bind the Jews, antecedently to the Sinaitic legislation and *à fortiori* after that event, to its strict observance.

Well here comes the difficulty. For the Sacred History proves plainly enough that such marriages were Divinely permitted among the Jews, (a) *prior* to the giving of the law. Thus the Pentateuch is our authority for saying that Abraham, "the father of the faithful," and his brother Nachor, married two nieces.² But, (b) we have a signal instance of a like marriage *after* the promulgation of the Mosaic law. For Caleb,—the only one at that time remaining from among the Israelites who had left Egypt, Josue having died previously,—gave his daughter in marriage to his younger brother.³ It is plain, therefore, that Caleb did not adopt Dr. Pusey's interpretation of the Levitical prohibition; nor have the Jews so understood it since. For Cardinal Cajetan is our informant that "such marriage was always allowed among the Hebrews, and up to the present day an uncle among them takes his niece in marriage."⁴ He gives it as his opinion, therefore, that such a marriage was not forbidden in the Law. And he

his is
proved;
from
scripture,
before and
after the
giving of the
law.

from
ewish prac-
ce since.

From au-
thority of
atholic
theologians.

¹ God's Prohibition, &c., p. 11.

² Gen. xi. 29; cf. xx. 12, and *à Lapide's* commentary on both passages. It is most probable that Jeshu (Gen. xi. 29) is no other than Sara. Some Commentators and Theologians, however, maintain, on the supposed authority of Genes. xx. 12, that Sara was Abraham's step-sister.

³ Judges i. 13.

⁴ "Non præcipitur mulieri, ut turpitudinem patris sui non revelet; nam tale connubium licitum semper fuit apud Hebræos, et usque in hodiernum diem apud eos patruus in uxorem ducit filiam fratris sui."—In Levit. xviii. 14.

is supported by the authority of Cornelius à Lapide,¹ and of Lorinus, whose testimony concerning the Jewish usage is stronger than that of Cajetan; for he declares that such marriage "is up to the present time most common among the Jews."² To these may be added Bellarmine;³ and in fact the all but concordant judgment of Catholic Theologians is that it was not prohibited under the Law.

We have, then, Scriptural evidence, Jewish tradition, the authority of Catholic Doctors, to prove, beyond all possibility of reasonable doubt, that the general prohibition, given in the sixth verse, does not include the special prohibition,—omitted, nevertheless, in the verses following,—of a marriage between persons related by consanguinity in the *second* degree transversally; though, by all parity of reasoning, (if we adopt the hypothesis of Dr. Pusey,) one would have antecedently expected that it would be so included. Mr. Robinson has every right, therefore, to condemn the gratuitous canon, "that when a man is forbidden to marry any relative in a generation prior to his own, he is by implication forbidden to marry one of the same nearness of blood in a generation following his own,"⁴ i. e. in the present instance, that, because he is forbidden to marry his aunt, he is therefore forbidden *ipso facto* to marry his niece.

Reasons for the permission of such marriage.

If any one should care to ask on what principle such a distinction is justifiable in reason, we answer, first of all, that by the law of nature woman is inferior to man, and is bound to obey her husband and to look up to him: since

"both

Not equal, as their sex not equal seem'd;
For contemplation he and valour form'd,
For softness she and sweet attractive grace;
He, for God only; she for God in him."

If, therefore, a man takes in marriage one of his own relatives who is inferior to him in order of generation, and is consequently by position of birth already bound to show him reverence, there is no such inordinateness as must result, if he

¹ Ad loc.

² Ad loc. "Usque hodie usitatissimum istud apud Judæos."

³ De Matrim. Sacram. L. i. c. 27. "Tertio probatur."

⁴ Bibliotheca Sacra for 1843, p. 298 (quoted by Dr. Davidson, Introduction to the Old Test., p. 279. t. i.).

should marry a connection who, by her very position in his genealogical tree, has a natural claim to his reverence and to a sort of social or family submission. Again, it may be said that in marriage, if there is to be marked inequality of years at all, it is better, for physical alike and moral reasons, that the advantage of age should be on the husband's side rather than on that of the wife.

However this may be, the fact remains the same. Dr. Pusey's claim, therefore, to be allowed to stretch the general principle enunciated in the sixth verse, so as to make it embrace other prohibitions than those expressly, or *implicitly*¹ given in the after verses, must be disallowed as simply gratuitous, in face of such formidable counterproof. If this one degree is evidently not included under it in the Divine intention, why should others be? Once admit it as a fact in one instance, you admit it as a probability in all. For where are we to draw the line, and why?

This practical difficulty ought to be sufficient of itself to convince us, that these prohibitory precepts, as a whole, form no part of the natural law, and are mere judicial precepts, temporary in their nature, adapted to the genius and political constitution of a special people, though built upon the foundation of a principle in the natural law, of which they are at once the partial expression, and particular but not immutable application.

This is not, however, the only difficulty that runs athwart Dr. Pusey's path, while attempting to make this classical passage in Leviticus square with the theory about the prohibited degrees, which has raised the phantom of his first Papal contradiction. A considerable controversy had arisen as to the lawfulness of marriage with a deceased wife's sister, which had excited public attention, and awakened in the minds of many a religious anxiety that was deserving of respectful sympathy. It would seem as though it was owing to the rise of this discussion, that Dr. Pusey's attention was called to the question of matrimonial impediments. He at once came to the fore; and, veteran in a thousand fights, took upon himself to

3. Difficulty arising from permission to marry a deceased wife's sister.

Dr. Pusey contends

¹ There is no doubt that marriage with a sister is *implicitly* forbidden in the Catalogue, (see Appendix C); but our argument is directed against prohibitions supposed to be *virtually* included.

prove that marriage with a deceased wife's sister was Divinely forbidden by virtue of the Levitical law. But he soon found that he had ventured upon a difficult task. For, first of all, such a marriage is not prohibited in any of the particular precepts. Hence arose the obvious necessity for rendering the general precept of the sixth verse so elastic, as to include within its provisions the special case in dispute. But then there was a difficulty here again. For one of the particular precepts virtually permits such marriage under ordinary circumstances, by limiting its prohibition to a singular case, only possible in a social economy in which polygamy was permitted. The Divine Lawgiver says, "Neither shalt thou take" (we use for this occasion the Protestant Version) "a wife to her sister, to vex her . . . beside the other in her lifetime."

that this marriage is forbidden.

Analysis of the precept in the 18th verse on this matter.

In this prohibitory precept the following points are worthy of remark :

i. There is no qualifying or explanatory clause, such as is to be found in most of the others, to bring out into clearer relief the indecency of the union.

ii. The prohibition is confined to the lifetime of the first wife ; or, in other words, a particular form of polygamy is prohibited.

iii. A reason is given for the prohibition. Yet not one word is said about any natural inordinateness arising from the degree of affinity, which, nevertheless, we have a right to expect, had such union in every conceivable case been a violation of the natural law.

iv. The reason given is, that such a marriage would be a source of jealousy to the first wife.

The conclusion from these premisses is so plain, that Dr. Pusey hardly likes to grapple with it. Accordingly he, as if incidentally, remarks : "This evidence appears to me so complete, that we might well be spared from considering an inference drawn from a mere limitation of polygamy among the Jews." The misfortune is that it is not a question of inference at all. The precept is in its own express form the prohibition of a certain form of polygamy,—nothing more, nothing less. However the writer proceeds : "That prohibition is a case *per se*. It probably was an express prohibition of a marriage in which the Jews might hold themselves

Dr. Pusey's way of meeting the difficulty.

countenanced by that which, upon the fraud of Laban, God had allowed to Jacob";—that is, according to Dr. Pusey, God allowed Jacob to violate an immutable precept of the natural law, because his father-in-law had played him a trick. But to proceed with the quotation: "An inference, in order to be valid, must be derived from that which is itself in force. No one would be allowed, in affairs of this life, to make an inference from an abolished law." This philosophical canon of the Oxford Professor has at least the merit of originality. Does he seriously mean to tell us that, no matter what the point of discussion may be, under no circumstances can we ever draw any inference from an abolished law? Alas! what becomes, then, of the Theological argument for the truth of Christianity, that is based upon the fulfilment of the types in the old ceremonial law? However, we are not concerned at present with Dr. Pusey's new Organon; we will, therefore, continue the quotation, requesting the reader's particular attention to the next sentence. "The law, 'thou shalt not take a woman unto her sister,' &c., *is abolished*. Else, by that same way of inference, which men are so fond of when it favours laxity, it would follow that polygamy is now allowable, except with the wife's sister. But since it is abolished, it is not lawful to argue by inference, that what men suppose to have been allowed by it to the Jews, is allowed to Christians. *That whole law is done away in Christ*. Together with the law itself, all inferences which depend upon it, are done away also. *We have no more concern with that law than we have with circumcision.*"¹

He admits
that this
prohibition
is a judicial
precept,
done away
in Christ.

At last we have something definite and tangible from the Professor's pen. The prohibition in the eighteenth verse "is abolished." The only precept that touches expressly on the question of marriage with a wife's sister is a merely judicial precept, is done away in Christ; consequently "all inferences which may depend upon it" have died away to. "We have no more concern with that precept than we have with circumcision." We rejoice that Dr. Pusey has got so far on our road; but why turn back? If this precept is simply

¹ God's Prohibition, &c., pp. 28, 29. The italics are our own.

Church that had defined the matter for thirteen hundred years ; for he knew his theology too well for that.

5. He teaches us that both Schools were unanimous on one point; viz. that these Levitical prohibitions could have no authority over Christians, save so far as they were re-affirmations of the natural law. If so, what becomes of those Scholastic authorities, ostentatiously paraded before our eyes, who draw a sharp distinction between the natural law and the Divine prohibitions in Leviticus, with respect to the degrees of consanguinity ?

6. He is proof that all were agreed on one other point. It was universally held, that marriage between parents and children was the only one prohibited by the natural law as incompatible with the strict obligations of duty.

iii. The third witness, who will close our list, is Peter Paul Parisio. This eminent canonist was born A.D. 1473. He was equally versed in Civil and in Canon law, both of which he taught at Padua, and then at Bologna. Paul III. made him a cardinal, A.D. 1539 ; and he presided over the congregation appointed to prepare material for the future deliberations of the Ecumenical Council, summoned by that Pope. He died in Rome, A.D. 1545, in the seventy-second year of his age, within a few months of the first session of that Council in Trent.

iii. PETER
PAUL
PARISIO.
His bio-
graphy.

We are not induced to make the copious extracts, which will be presented before our readers, from any extraordinary weight attributable to this writer's opinions on matters of Dogmatic Theology. It must be borne in mind that the study of Canon law and the study of Dogmatic Theology, whether Positive or Scholastic, are two things totally distinct ; and it does not follow that eminence in the one must of necessity be accompanied by eminence in the other. Indeed the reverse is much nearer the truth. For though no one could apply himself with sufficient profit to the study of Canon law, unless he were tolerably grounded in the principles of Theology, nor hope to attain proficiency in the latter without having made himself acquainted in some measure with the former ; nevertheless, as the studies are so different in their nature as to require a distinct order of intellectual gifts, the pro-

after eleven o'clock at night, would it be so very odd if he concluded that he might keep it open till that time? If a mother gives her little boy an injunction not to go out into the garden without the nurse, should we be surprised at his audacity were he to infer that he might go out if the nurse were with him? We freely own that, if in either case there were a more general prohibition which included these acts as well, the case would be different. But this is precisely what Dr. Pusey has to prove; precisely what his opponents strenuously deny.

But to continue the quotation:—"The order of the words seems purposely inverted for emphasis; but that inversion makes the first clause the more complete in itself. 'A wife to her sister thou shalt not take.' But further, the person spoken of in the last clause, 'so long as she liveth,' may be either sister. The sister who is the object of the prohibition is the second sister; she also is the sister spoken of in the clause '*nec revelabis turpitudinem ejus*': in the next clause only does the 'her' refer to the first sister. In the last clause, then, it is just as natural to take the words 'so long as she liveth' of the first (?) sister, who was the sister spoken of in the main clause of the sentence, and had been spoken of in a clause just preceding, as of the second (?) sister, who is spoken of subordinately in the last only. In this case, according to a well-known idiom, 'I will praise my God as long as I live' (*bechaiiai*), the words would be the most emphatic prohibition ever to take her."¹

Is this honest? The precept in question had been absolutely dismissed as an abrogated law, originally instituted to regulate the polygamic usage, but long since "done away in Christ"; and now the same precept is revived as though it were an utterance of the natural law,—and revived by an interpretation of which we need only say, that it can find no supporter save Dr. Pusey in ancient or modern theology, and is expressly contradicted by the uninterrupted practice of that people, for whose direction the precept was originally given. We will arm ourselves with Dr. Pusey's authority, and say,

¹ God's Prohibition, &c., p. 33.

in words of his that have been already set before the reader, "Let any one choose what objection he thinks to be good, and abide by it. But let not any one, as he loves or reverences the law or truth of God, urge first the one, then the other. To urge objections, inconsistent with each other, shows that a person's object is, not to ascertain the truth, but to get rid of that, against which he urges them."¹

Dr. Pusey would seem to have been disquieted within him at presenting this double-faced argument before his readers; for,—as if oppressed by the burden of his own strategy,—he confounds the terms, *first and second sister*, using them in contrary senses in the earlier and later clauses. Moreover, he continues, as if deprecating criticism, in the following words: "I do not rest the argument upon this, for I believe that the real and sufficient ground which makes these marriages illegal is, that they are directly prohibited by God's law, Lev. xviii. 6, in its natural sense, in the only sense in which it is in harmony with the rest of the chapter. . . . But at least it cannot be said, that the weight of authority against the interpretation which would make Lev. xviii. 18, a prohibition of polygamy generally, lies against this natural construction of the words."²

He declines to be bound by his second explanation.

The exact meaning of this last sentence, and its consequent bearing on the main issue, we do not care to determine; but it is plain that Dr. Pusey parts with his new invention somewhat reluctantly. What deserves the reader's notice is, that the Doctor now distinctly stands by the sixth verse as his final *point d'appui*, and returns to the theory of that inclusiveness, which he claims for the general prohibition contained in the sixth verse. We have already seen some of the difficulties surrounding this theory, and shall have occasion to return to it presently.

He returns to the sixth verse as the basis of his argument.

But, before passing on to another difficulty, it will be as well to put the present point in the controversy in a concise and intelligible form, before our readers.

Setting aside, therefore, that shy after-thought of our opponent, as unworthy of serious consideration,—especially since

¹ Ibidem, p. 9.

² Ibidem, pp. 83, 84.

its author has himself disclaimed its argumentative relevancy, we will offer a summary of Dr. Pusey's present contention, and endeavour to estimate its value.

Summary of
Dr. Pusey's
case, as it
now stands.

He maintains, then, that the particular prohibition in the eighteenth verse is a merely judicial precept; that it began with the Jewish economy, as with that economy it passed away. It was intended as a special restriction on the practice of polygamy at that time provisionally permitted; but the prohibition has come to an end with that usage which it was intended to restrain. It does not oblige Christians in any way; and therefore,—this is his first conclusion,—no valid inference can be drawn from its provisions applicable to Christian Ethics. His second conclusion is, that it is altogether unreasonable to argue from a particular prohibition of a certain kind of marriage under given circumstances to its universal permission, whenever such circumstances do not stand in the way.

Such is the theory propounded on the subject of the special precept which is contained in the eighteenth verse. As for the general prohibition of the sixth verse, it forms part of the natural and eternal law, implicitly includes other prohibitions beyond those which are given in the context, and in particular includes the prohibition of marriage with a deceased wife's sister.

Its exami-
nation.
Answer to
the Doctor's
first con-
clusion.

What have we to say concerning this doctrine? It will be well to assume Dr. Pusey's first conclusion as our *point de départ*; for we shall see that its consideration will cover the whole ground of our divergence. Is it true, because the special prohibition in the eighteenth verse belongs to the class of judicial precepts, and has been consequently abrogated since the establishment of the Christian Church, that no valid inference can be drawn from its provisions, applicable to Christian Ethics?

We suppose Dr. Pusey to mean, of course, its applicability to the *particular question* in its relation to Christian Ethics; and our answer is as follows:—

We are prepared to admit that no *absolute or ostensive* inference can be drawn from such premisses; but we at the same time insist, that we have every right to construct an *elenctic*

argument from them, that such argument has a resistless cogency, and that it ought of itself to determine the controversy. The surest proof of the truth of our assertion will be found in the exposition of the argument itself, which we present in the form of a dilemma.

Either the general precept contained in the sixth verse forms part of the natural law, or it does not.

dilemma

If it does not, Dr. Pusey is nonsuited; if it does, it cannot embrace any prohibition of marriage with a deceased wife's sister.

The first part of the minor is evident on the face of it. It will only, therefore, be necessary to establish the second half of the proposition, in which we assert that if the general precept forms part of the natural law, it cannot possibly include any prohibition of the sort of marriage with which the present controversy is concerned.

And this is our proof. The natural law is immutable. God even cannot change it, nor dispense from its observance in the genuine sense of a dispensation. This statement is Theologically certain. But marriage with a deceased wife's sister was permitted to the Patriarchs, and,—as we contend,—was implicitly permitted under the law by the provisions of the judicial precept in the eighteenth verse. Consequently its prohibition could form no part of the natural law; and therefore, on the above hypothesis, cannot be included under the general prohibition.

The assertion, as to the permission granted to the Patriarchs, needs no further proof than the Scripture testimony already produced.

Proof of the second proposition, touching the permission implicitly contained in the judicial precept, has been already given; but we return to it the more readily, because it enables us to complete our answer to Dr. Pusey's second conclusion. We beg leave most emphatically to deny that it is unreasonable to argue, in this or any other parallel case, from a particular prohibition, under certain well-defined circumstances, to a general permission when those circumstances are absent. On the contrary, we do not doubt but that the universal verdict of common sense would be in our favour. We will

Answer to his second conclusion.

We have right to argue from the particular prohibition to a general permission.

Illustrated
by an ex-
ample.

suppose a case by way of illustration. Let us imagine for a moment that some wise legislator, having formed a strong opinion as to the moral obliquity of second marriages, should have the folly to enact that no son should steal from his father during his mother's lifetime, or for so long as his father remained a widower. What would be the judgment of public opinion on this legislative feat? Would not the common voice exclaim against it as an idle absurdity, and,—what is more,—as an incentive to crime? Would not men be inclined to protest against it in some such indignant form as this :—" Why, what nonsense! Is there not already a general law against all stealing whatever? What is the use of telling the boys, that they must not steal while their father is alive, or remains a widower. Of course they must not. It has been forbidden all along. This new law plainly means nothing more nor less than this, that they are permitted to rob their father, if he should marry a second time."

And who can venture to say that this indignant animadversion would not be just? In every conceivable case, to prohibit an act only under certain circumstances is equivalent to a tacit permission of the act, whenever those circumstances do not stand in the way.

Proved by
Dr. Pusey's
own testi-
mony.

But we will call Dr. Pusey himself into the witness-box. For he tells us that this judicial precept, given in the eighteenth verse, was Divinely instituted as a *special limitation* of the polygamous permission. But how could it possibly be imposed as a limitation, if the limitation already existed by virtue of that principle of the eternal law which, albeit formally *enunciated*, as Dr. Pusey assures us, in the sixth verse, must have been of obligation from the beginning? We may fairly suppose that the Israelites were not permitted to commit murder or adultery, even before the promulgation of the Decalogue; so, in like manner, they would not have been allowed to marry a deceased wife's sister, if it had been contrary to the dictates of the natural law.

The self-con-
tradiction
involved in
the opposite
theory.

But there is something more to be said. If the general prohibition includes, implicitly at least, the prohibition of such marriage because it is contrary to the natural law, it follows as an inevitable consequence that the particular pre-

cept in the eighteenth verse must belong to the natural law in like manner. On Dr. Pusey's peculiar hypothesis, they must stand or fall together. His theory, therefore, is self-contradictory.

The logic of facts, as it has been aptly called, affords a strong confirmation of the truth and justice of our inference in this particular case. It can hardly be denied that, in a matter proper to the Mosaic law and to the mode of its observance among the people to whom that law was given, no authority in the natural order can well be higher than genuine Rabbinical tradition and Rabbinical teaching. At all events, when constant and consentient, it is an irrefragable witness to the social customs of that remarkable people, as handed down from the olden time. Now it so happens that the chief Rabbi in London was consulted by the Commissioners appointed to inquire into the law of marriage; and his letter in reply was given in the Appendix to their report. The substance of his answer is as follows.

The argument confirmed by the Jewish practice.

The Rabbi explains the precept in question to have been a limitation of polygamy, at that time tolerated among the Jewish people, in this particular instance, "lest the law of nature should be reversed, and those in whom she has planted mutual love, be converted into rivals and enemies." He appeals to the difference of wording, as contrasted with the other precepts, for proof that the prohibition was limited to the lifetime of the first wife, and accounts for its omission in the twentieth chapter of Leviticus, on the score that it was not "wholly and for ever interdicted." He further adds, that such is the concurrent view of all the Rabbis, without exception, and of Jewish commentators from Philo up to our time. As to the practice, he informs us that such marriages are common among the Jews in all countries where they are not prohibited by law, and were "frequent in England prior to the passing of the 5th and 6th William IV."

Nothing can be clearer or more satisfactory than this evidence of Dr. Adler on all those points, in which the weight of his authority is indisputable. It is corroborated,—if corroboration were necessary,—by further evidence, collected in a document which was drawn up with great care and moderation

by the Rev. R. C. Jenkins, and handed by him to the Commissioners at the close of his examination.

It is impossible, therefore, to avoid arriving at the conclusion that this principal case, by which, and for the sake of which, Dr. Pusey has striven to prove that these Levitical precepts form part of the natural law, tends, under due examination of the evidence, to prove exactly the reverse.

Out of the catalogue of prohibitions which are pronounced to be solemn echoes of the natural law, we have been encouraged by Dr. Pusey's authority, and compelled by the evidence of facts, to erase from the list one, not the least important in its bearings on the particular controversy of our time, and to assign it a place among those judicial precepts which were "done away in Christ." But it is not destined to be a solitary instance; for we shall now see that,—to be consistent,—we are compelled to pass a similar judgment on another of these precepts. This leads us to a fresh difficulty that besets Dr. Pusey's position.

Fresh difficulty;—another of the prohibitions in Lev. xviii. proved to be a judicial precept.

In the sixteenth verse of that chapter in Leviticus which is our present text, marriage with a brother's wife is prohibited; yet in another part of the Mosaic Law this marriage is, under certain special circumstances, enjoined by the same Divine Authority. These are the words of the precept:

What is there forbidden is Divinely enjoined in a particular case.

"When brethren dwell together, and one of them dieth without children, the wife of the deceased shall not marry to another; but his brother shall take her, and raise up seed for his brother. And the first son he shall have of her he shall call by his name, that his name be not abolished out of Israel.

"But if he will not take his brother's wife, who by law belongeth to him, the woman shall go to the gate of the city, and call upon the ancients, and say: My husband's brother refuseth to raise up his brother's name in Israel, and will not take me to wife.

"And they shall cause him to be sent for forthwith, and shall ask him. If he answer: I will not take her to wife:

"The woman shall come to him before the ancients, and shall take off his shoe from his foot, and spit in his face, and say: So shall it be done to the man that will not build up his brother's house!

"And his name shall be called in Israel, The house of the unshod."¹

Dr. Pusey's method of dealing with this difficulty renders it necessary that we should set before the reader an analysis of the above law, with the addition of certain comments on its provisions. We are less loth to undertake the task, because the subject-matter is of intrinsic interest, as bearing on the social and political life of the chosen people, the relation of the Divine Legislation to that particular life, and the general design in both, and thus throws considerable light on one important class of judicial precepts.

Analysis of
this Divine
injunction.

i. We note then, first of all, that the obligation of this law, —whatever the nature of that obligation may be,—falls upon the deceased husband's *brother* in the distinct and specific meaning of the term. Our reason for calling attention to this fact is, that Calvin,—like those who in later times have shared his views regarding the inviolability of the Levitical prohibitions,—anxious to free these latter from the exceptional legislation contained in these verses of Deuteronomy, maintained that the word, *brother*, in this precept is employed, as it not unfrequently is in the Sacred pages, to represent more distant relationship, or relationship in general. This interpretation has found a place in the margin of the Protestant version; but it cannot be maintained in connection with this particular passage. For it would appear from the Gospels,² that the Jews in our Lord's time understood the term in its native sense. If, however, it should be contended that the word, ἀδελφός, as employed in this Gospel narrative, admits of a similar rendering, we produce, by way of answer, the practical application of the law in a particular instance. For it existed in the time of the Patriarchs; and we have, in the history of Juda, the clearest proof that the obligation of marrying the widow was, at that time, understood to fall upon the brother properly so called. Juda, at the epoch when the incidents occurred to which we are referring, was the father of three children,—Her his first-born, Onan, and Sela,—by his wife

a. The law
refers to a
brother
properly so
called.

Proved from
Scripture.

¹ Deut. xxv. 5-10.

² S. Matt. xxii. 25. S. Mark xii. 20.

Sue, a Chanaanite. Her married Thamar, and, shortly after, was slain by the Lord for his wickedness. Whereupon Juda commanded his second son Onan to take his brother's widow to wife; and, on the death of Onan soon after, he made arrangements for her future marriage with his youngest son, Sela. The reason which the Patriarch gives to his son for the espousals is identical with that which is contained in the judicial precept under our consideration.¹ In this instance, at all events, there is no chance of mistaking the relationship.

b. It was a law of strict obligation; not a permission only.

ii. We remark that the precept was strictly obligatory in law. The expression in the Vulgate, "*who by law belongeth to him*," would have afforded sufficient proof of this, were it not that the present Hebrew text, and the Septuagint version, have nothing corresponding to it. We can afford, however, to pass it over, as the truth of our assertion is equally clear from another expression common to the text and all the versions. For the marriage in question is described as "*the duty of my husband's brother*." Further confirmation is afforded by the fact of the penalty assigned to a breach of it.

c. The sanction of the law was severe.

iii. Therefore, we call the reader's attention to the nature of the punishment to be inflicted on those who violated its provisions. First of all, the rejected widow is required to cover him with infamy from head to foot;² as commentators on the passage have remarked. She has to spit in his face as a mark of contempt, and then to take his shoe from off his foot as a mark that he is unworthy to enjoy the privilege of a freeman, and has reduced himself to the level of a slave. Secondly, he is condemned, during his lifetime, to bear a public nickname of reproach.

d. The penal removal of the shoe by another quite distinct from the voluntary removal of it in cession of property.

iv. It is to be borne in mind that this compulsory and penal removal of the shoe by another is perfectly distinct from the voluntary removal of the shoe by the wearer himself and its presentation to another, which was a sign, in common use among the Jews, of transfer, or cession of landed or other rights between kinsmen. So much we learn from the book of Ruth, where it is written, "Now this in former times was the

¹ Gen. xxxviii.

² This is the expression of Abulensis, Oleaster, and Fevardentius, quoted by Corn. à Lapide in Deut. xxv. 8, 9.

manner in Israel between kinsmen, that if at any time one yielded his right to another; that the grant might be sure, the man put off his shoe, and gave it to his neighbour: this was a testimony of cession of right in Israel."¹ The shoe appears to have been an established symbol of possession; as appears from Ps. lix. 10, and cvii. 10, (in the Protestant version, lx. 9, and cviii. 9).

v. It is further to be remarked that the provisions of this judicial precept were afterwards evidently extended, either by custom or human legislation, to other more distant relations, only not under the same strict obligation; so that, failing any surviving brothers, the right of inheritance to the deceased husband's property with the concomitant *onus* of taking the widow to wife, was the right, if claimed, of the nearest of kin, and, in the event of his wishing to decline the privilege, then of other kinsmen in turn according to order of relationship.²

vi. It is not undeserving of notice that the immediate object of this law, as revealed to us by its Author, was the perpetuation of the family, and the preservation of the property attaching to it within the circle of its own members. The further purpose, as Malvenda reminds us,³ was to insure a continuance of the primitive distinction of tribes, and, for that end, to preserve within each tribe the possession of its inheritance, according to the commandment of the Lord, as it is recorded in the Book of Numbers: "For all men shall marry wives of their own tribe and kindred: and all women shall take husbands of the same tribe: that the inheritance may remain in the families, And that the tribes be not mingled one with another, but remain so, As they were separated by the Lord."⁴

vii. It is the opinion of Justinus, which Sa in his commentary on this place in Deuteronomy endorses, that even though the brother of the deceased husband should happen to be already married, he was obliged by this statute to take his sister-in-law to wife. The opinion is, therefore, at least probable, and should not be forgotten in the survey of the whole question that we are at present engaged in discussing.

e. The provisions of the precept extended afterwards to all of kin; but without strict obligation.

f. The object of the law, political and partly ceremonial.

g. Probably it obliged the brother-in-law, even if already married.

¹ Ruth iv. 7.

³ Ad loc.

² Ruth iv. 1-12.

⁴ Numbers xxxvi. 7-9.

Conclusion
of the
argument.

We now return to our main argument, and contend, on the strength of this judicial precept, that the prohibition, contained in the seventeenth verse of Leviticus xviii., cannot possibly form any part of the natural or eternal law. The conclusion is deduced from the same premisses as in the former instance. For if it were part of that law, it could admit of no repeal, suspension, or even particular dispensation from its observance; but it would be still more impossible,—if we may use such an expression,—that God should proclaim a permanent law, enforcing its habitual violation under certain circumstances for mere purposes of social or political advantage. Since therefore, as a matter of fact, such is the case in the present instance, nothing further is required to prove that this prohibition in the Levitical catalogue is in like manner a judicial precept.

Dr. Pusey's
objections
to it.

But Dr. Pusey has a series of objections to urge against this conclusion. He endeavours to construct an argument for his purpose, out of a supposed contrast between the respective settings of the two statutes. "The prohibition," he urges, referring to the precept in Leviticus, "is absolute; the exception is restrained to a particular case in the former people of God. . . . The *prohibition* occurs amid laws strictly moral (Levit. xviii.); the exception occurs in a wholly different place (Deut. xxiv. 5–10), amid laws relating to the civil polity of the Jews."¹

First
Objection.
Intrinsic
difference
between the
precept and
exception;
and differ-
ence of place
in the Leviti-
cal code.

Answer.

We assign to this little nest of difficulties the first place; and our answer is as follows:

a. The in-
junction
more abso-
lute than the
prohibition.

a. The prohibition is absolute in its subject-matter, it is true; but the injunction in Deuteronomy is as absolute in its own subject-matter; nay, if anything more so. For the prohibition is subject to the one exception; whereas the injunction admits of no exception whatever.

If, however, Dr. Pusey intends by the word, '*absolute*,' to maintain that the prohibition was made to all nations and in all times, while the injunction was given to a special people and only for a time, we content ourselves with simply denying the former proposition, which is a mere *petitio principii*. Our

¹ Evidence, &c. Pref. p. xxviii.

contention all along is, that the prohibition was a judicial precept binding on the Jews only; and it will never do to take it for granted.

b. As regards Dr. Pusey's second proposition, we deny that the catalogue in Leviticus, (for it is plain that it must be taken as a whole, as dealing with one special subject), occurs amid laws strictly moral; and we deny that the injunction in Deuteronomy occurs amid laws relating to the civil polity of the Jews, which,—to add a necessary part of the antithesis,—are not moral.

b. The difference of place is ideal.

Now for our proof. The precept immediately antecedent to the catalogue given in the first verses of the eighteenth chapter prohibits eating "*the blood of any flesh at all*," and prescribes certain purifications for those who have eaten anything that has died a natural death or been caught by beasts.¹ The precept which immediately follows is, by universal confession, judicial or ceremonial; certainly not moral.² Proof.

The statute immediately preceding the injunction in Deuteronomy is, taken literally, ceremonial;³ the next preceding is partly moral, partly judicial.⁴ Immediately before these come a string of precepts, some judicial, some moral, concerning the hiring of labourers, acts of justice and of charity.⁵ The precept immediately subsequent to the injunction is judicial.⁶ Then follow three moral precepts.⁷ There does not appear, therefore, to be any such contrast between the two precepts in this respect, as Dr. Pusey would lead us to suppose.

The second objection of the Doctor is, that the precept is not compulsory; and he makes a formal complaint against the late Archbishop Whately, (and would therefore urge the same complaint against us,) because of his inaccuracy in speaking of "*the compulsory marriage with the deceased brother's widow*."⁸ Dr. Pusey elsewhere in a note calls it a *permission*.⁹ Spite of his authority, we still insist upon its

Second Objection. The injunction is not compulsory.

¹ Levit. xvii. 12-16.

² Deut. xxv. 4.

³ Deut. xxiv. 10-22.

⁴ Deut. xxv. 13-16.

⁵ Ibidem, note, p. xxix.

⁶ Levit. xviii. 19.

⁷ Deut. xxv. 1-3.

⁸ Deut. xxv. 11, 12.

⁹ Evidence, &c. Pref. p. xxviii.

The state-
ment
refuted.

being a marriage compulsory by law. "But," says Dr. Pusey, "while the law encourages the marriage, it leaves the brother free."¹ Only *encourages*! Why it *enjoins* it under penalty. But it leaves the brother free. Yes, in the same sense as the law against murder leaves the person free; only if he *likes* to do it, he is to be hanged for it.

Dr. Pusey objects: This parallel will never hold good; for the brother who refuses to obey the precept is subjected only to "a very slight penalty."² What! A very slight penalty, that a man must by law submit to be spat upon publicly in his face, and to be, as it were, degraded to the rank of a slave, and then to receive an opprobrious nickname for the rest of his days! If this is Dr. Pusey's specimen of a very slight penalty, his ideas of penal legislation must indeed be ultra-Draconic.

The objec-
tion con-
firmed from
Scripture.

But Dr. Pusey has one more argument against its claim to be a strict injunction. We will quote his words: "In the only instance subsequently mentioned in Holy Scripture, no blame is attached, even to a near kinsman who refused to marry Ruth under this law, on the ground 'lest I mar my own inheritance.'"³ Our answer to this difficulty is a reference to our fifth note. Dr. Pusey must have allowed the word, *even*, to slip into the sentence by an oversight; for it is plain that *only* ought to occupy its place. The facts are these:⁴ Ruth had married Mahalon, son of Elimelech and Noemi. Mahalon died without issue; and Chelion, his only brother, was dead likewise. Booz was a near kinsman to the family on the side of Elimelech; and when Ruth came with her mother-in-law Noemi, who was also a widow, to Bethlehem the city of her father-in-law, he was set upon marrying her. But as there was one nearer of kin in the way, the option was first given to the latter to take the inheritance of Elimelech with Ruth for his wife; and on his refusal, Booz with the wonted ceremonies espoused her, and entered on possession of the property. It was not a case that fell under the provisions of the law mentioned in Deuteronomy at all, since neither of the kinsmen were brothers-in-law to Ruth; but

The con-
firmation
refuted.

¹ Evidence, &c. Pref. xxviii.

² Ibidem.

³ Ibidem.

⁴ Ruth i-iv.

rather belonged to some human enactment made on the basis, and as an amplification of the Divine law, yet without the sanction of any penalty.

As Dr. Pusey's objections, therefore, to the conclusion that we have drawn from premisses provided for us by the exceptional injunction in Deuteronomy, are valueless, we repeat our assertion that the law, prohibiting marriage with a brother's wife, is to be reckoned among the judicial precepts. It follows that, out of the twelve Levitical prohibitions, two are judicial;—one, on Dr. Pusey's own admission; the other, by plain and irrefragable deduction from the nature of the eternal law. But, if two, why not all? Is there not an antecedent probability that the character of these prohibitions will be similar throughout, since there is nothing in the external structure, or position of the two in the catalogue, to distinguish them from the rest? It may be objected, indeed, that the prohibition to marry a wife's sister is distinguished as well by the special limitation to the lifetime of the wife, as by insertion of the reason for its forbiddance. But we must bear in mind that the former clause only defines the subject-matter of the law, and does not affect its shape; while the latter is common to most of the other prohibitions. In any case, no such peculiarities,—if they are such,—can be found in the precept that forbids marriage with a brother's widow. Why, then, should sentence of excommunication be pronounced from the cloisters of Christ Church against those who retain the old teaching of the Catholic Schools, and hold that the whole of these prohibitions, including the declaratory preamble, are to be classed among the judicial precepts? But this does not prevent us from believing at the same time that one of them, at least, is an echo of the natural law; as will be seen more clearly, when we come to the proper place for exposing Catholic teaching concerning the prohibited degrees.

Meanwhile, we have yet another difficulty to lay before Dr. Pusey, ere we part from the catalogue of prohibitions; and it is suggested by his own teaching. The Commissioners, appointed to examine into this matter, put to him the following question: "Are you to be understood as coming to the

Cor
oft
dim

Fre
cult
gent
Dr.
teac

conclusion, that, by virtue of the whole of that chapter (Lev. xviii.), it is sufficiently clearly pointed out that marriages of this description were intended to be prohibited; that is, marriages within the prohibited degrees of affinity?—prohibited, that is, by the law of the land and the discipline of the English Establishment.

To this pertinent question the Oxford Professor gives the following reply: "I hold, as the Church of England does, that both the specific instances given under the general prohibition, 'none of you shall approach to any that is near of kin to him . . .,' and those which are equal to those instances, and which are like in principle to those instances, are prohibited. I believe that those prohibitions in the 18th chapter of Leviticus are binding now as part of the law of God."¹

Then comes another most seasonable question: "And you consider that it is not only what is there specifically mentioned, but everything *ejusdem generis*, and that those marriages are *ejusdem generis*?" To which Dr. Pusey answers, "Yes."²

Once more: when asked whether he "put upon the same footing marriages of persons connected by consanguinity and affinity," his reply is, "Yes; I regard them as the same—of course not the same in intensity, but equally prohibited."³

Here we are, then, returning to that all-important question, "*Who is of kin?*" The Levitical catalogue is confessedly incomplete. There are other marriages prohibited by the Divine law, besides those explicitly mentioned in the Mosaic code; and that Divine law, as such, binds us now.

This is a matter of considerable practical importance. It behoves every Christian to know precisely what God forbids and what God permits; and the law itself only gives certain specimens. Well, we go in our perplexity to Dr. Pusey, as the Commissioners did; and he gives us his answer. Let us examine it a little.

It consists of three principal points; (a) the setting before us the teaching of the Church of England as a guide on the matter; (b) in accordance with that teaching, the announce-

¹ Evidence, &c. p. 5. n. 429.

² Ibidem, n. 430.

³ Ibidem, p. 7. n. 433.

suggestion
of the diffi-
culty,
Who is of
kin?

Dr. Pusey's
answer.
He invokes
the autho-
rity of the

ment of his first canon, viz. that marriages of persons connected by affinity are equally prohibited by the Divine law with marriages of blood-relations; (c) the announcement of his second canon that the prohibition, in cases of consanguinity, stands on an *intenser* footing.

English
Establish-
ment and
gives two
canons.

Well, after all, these two canons do not help us much in defining our obligations; so we will go to the Anglican Establishment for assistance in our doubts and difficulty.

The canons
of no great
service.

We are not aware of any other place where that institution has given us any teaching on the subject, save in the table of prohibited degrees, published in its book of Common Prayer. So thither let us betake ourselves.

The teaching
of the Eng-
lish Estab-
lishment
examined.

We find one thing to console us, *ab initio*. There is no prohibition beyond the second degree, whether of consanguinity or of affinity. But are all cases of consanguinity and affinity in these two degrees forbidden? No; there is a remarkable exception. For the marriage of first cousins, who are within the second degree of consanguinity, is permitted; and why? ¹

On analyzing the Anglican catalogue, we find twenty classes of marriages prohibited as regards men, (and the women's list is exactly parallel,) by reason of affinity; and ten, because of consanguinity. Nor is this surprising, when we bear in mind the wider reach of affinity, arising out of the nature of the case. Of the twenty prohibitions by reason of affinity, fourteen are in the second degree, six in the first. Again, out of the fourteen in the second degree, six are in the right, eight in the collateral or transverse line. Cousins, as we said before, are in the second degree of consanguinity, and in the transverse line. Why are the eight cases of affinity forbidden, and this single case of consanguinity in the same degree and line permitted? Apply Dr. Pusey's second canon: Where is "the *intenser* footing"? Is the marriage between cousins "*equal*"—to say the least,—to marriage with a brother's son's wife and a wife's son's daughter; or is it not? Is the prohibition of marriage between first cousins binding now as part of the law of God, or no? If it is not, what reason

The mar-
riage of first
cousins
permitted;
why?

¹ It is remarkable that marriage with half-brother and half-sister is also not forbidden in the Anglican Table.

can be assigned? It is in the same degree and same line as eight cases of affinity which are prohibited in the Anglican table; and the fact that it is a relationship by blood would only make the prohibition "*more intense.*" Must we borrow from Dr. Pusey's hermeneutics; and as he assures us that in the Levitical law "the marriage with *the wife* (!) of the deceased *sister* is left in reverent silence, wrapped up in that with the sister herself,"¹ so assert, ourselves, on behalf of the Anglican table, that the marriage with a first cousin is left in reverent silence, wrapped up in that with the aunt herself?²

Dr. Pusey's
dilemma.

In sober earnest, what can we conclude other than that the Anglican Establishment has exempted its members from all obligation to a law of God which, as forming part of the eternal law, binds them now and for ever; while Dr. Pusey makes no protest, but perseveres in his public profession of adherence to its teaching? Is not our doctrine with regard to these matrimonial prohibitions less cruel to his own communion, than that which he has so ardently embraced?

Dr. Pusey's
next argu-
ment derived
from the
structure of
the prohi-
bitions.

But we pass on to the consideration of another intrinsic argument of Dr. Pusey, derived from the text itself, which is based on the uniformity of external structure apparent in these precepts, and the emphatic solemnity of command common to them all.

We proceed to present it in his own words: "It is difficult to say on what ground of Holy Scripture such distinction is made, that some prohibitions of God's word, as to unlawful marriages, should be held to belong to the municipal law, while others *may* belong to the moral law. All are rehearsed together, one after the other; to all is prefixed the same solemn 'Thou shalt not.'"³

A self-con-
tradiction in
his state-
ment of it.

Why, who should be better able than Dr. Pusey himself to tell us the ground of such distinction, seeing that he has admitted it in the case of this very catalogue? Is it not he who has told us himself that the last precept in the list is judicial? This is another of the self-contradictions with which he has involved his case. Either he must retract his judgment about that twelfth precept, or he must abandon the present argument; for the two are incompatible.

¹ Evidence, &c. Preface, p. vi.

² See Appendix D.

³ Ibid. p. xxvi.

But let us now estimate the absolute value of the inference in question. If we consult the very chapter of Leviticus where the famous prohibitions occur, in the nineteenth verse that immediately succeeds them, will be found a precept, couched in the same solemn formula, "*shalt not*," environed with the same preface and postscript, which is so evidently judicial that its abrogation under the new law of Christ is now universally admitted, we believe, by all professing Christians. Indeed Suarez puts it in evidence, as proof that the form of prohibition will not help us to determine the class of precepts, to which a given law should be assigned.¹

Examination of the inference.

This identity of structure includes a precept merely judicial by universal consent.

If we examine the following chapters, we shall find that this intermingling of moral with judicial, and even ceremonial precepts, all of which indifferently are constructed after the same model, with the same "*solemn shalt not*," is the rule rather than the exception. Take, for instance, verses 11 to 13 of this nineteenth chapter: "You shall not steal. You shall not lie; neither shall any man deceive his neighbour. Thou shalt not swear falsely by my name, nor profane the name of thy God. I am the Lord. Thou shalt not calumniate thy neighbour, nor oppress him by violence. *The wages of him that is hired by thee shall not abide with thee until the morning.*" Take again vv. 18, 19. "Seek not revenge, nor be mindful of the injury of thy citizens. Thou shalt love thy friend as thyself. I am the Lord. Keep ye my laws. *Jumentum tuum non facies coire cum alterius generis animalibus. Thou shalt not sow thy field with different seeds. Thou shalt not wear a garment that is woven of two sorts.*" So again,—to take an instance of a ceremonial precept,—v. 30: "*Keep ye my sabbaths, and reverence my sanctuary.* I am the Lord."

Ceremonial, judicial, and moral precepts, mixed up together as a rule in the Pentateuch.

Once more: take the twentieth chapter, in which the prohibitory precepts of the eighteenth chapter are repeated. Immediately consequent on this recapitulation, there occurs a precept which has already occupied our attention. No one can deny its ceremonial character; yet it has its own special preface and special postscript. "I am the Lord your God,

¹ De Legibus, L. ix. c. 11. n. 21.

who have separated you from other people. Therefore do you also separate the clean beast from the unclean, and the clean fowl from the unclean; defile not (לֹא תִשְׁקֹצוּ) — the fut. 'you shall not defile') your souls with beasts, or birds, or any things that move on the earth, and which I have shown you to be unclean. You shall be holy unto me, because I, the Lord, am holy, and I have separated you from other people, that you should be mine."¹ The verb expressive of command has precisely the same form as in the prohibitions of the eighteenth chapter, and what Dr. Pusey calls the sanctions are there also; so that the external structure of the precept is precisely the same. We might heap up other examples from the books of the law; but let these suffice.²

Juxtaposition, therefore, the use of the future however solemn, and—we will add by anticipation,—preface and peroration of whatever kind, may be dismissed to the harmless region of rhetoric. As constitutive of any solid logical argument, they are valueless.

Ere leaving this first class of intrinsic proofs by which Dr. Pusey has hoped to establish his position, we have a most important question to settle. The principal foundation on which our answer to the Doctor's arguments rests, has been, as our readers may have perceived, the absolute or unconditional immutability of the natural law; a point on which we insisted at some length in the introductory chapters. But this foundation has been directly assailed; so that it will be necessary in some measure to go over the ground again.

Unless the Oxford Professor is prepared to deny the objective existence of absolute right and wrong, he must acknowledge certain first principles of moral action, so unalterably founded in the very Being of God, that their negation is equivalent to a negation of God,—their change, to a change in God,—their suspension, even for a moment, to the suspension of God's Justice and Sanctity. To admit that, under

¹ Levit. xx. 24-26.

² See the whole of the nineteenth chapter, over which the Douay version has this heading: "*Divers ordinances, partly moral, partly ceremonial, or judicial.*"

Dr. Pusey assails the main principle, that the natural law is immutable in every way.

Refutation of this attack.

special circumstances or for a particular advantage, we might by a supposed Divine permission, curse God, for instance, or,—to take an example from the second table of commandments,—commit murder in the *formal* sense of the word, or adultery, is either virtually to deny God's existence, or to maintain,—which comes to the same thing,—that He can by His free Will cease to be holy and just. But even “if we believe not, He continueth faithful” (πιστός,—trustworthy); “He cannot deny Himself.” He cannot put off Him His excellent Perfection as a garment; for He cannot make void His own underived Existence. It is impossible, therefore, that He could ever permit the change of that, which no more depends on His own free Will than His own unchanging Godhead. Yet of such kind are the principles of His own eternal Law, which do not bind Himself, only because no one can be, in accuracy of speech, a law to himself; and because in Him Lawgiver, Law, supposed Subject, are all ineffably One. They are the adamant rule of His Providence in the moral order, and the partial yet real expression of His Holiness. No condition of human society, no combination of events or circumstances, no exigency of a particular epoch, can affect that supercelestial Equity which is throned in the Chancery of heaven,—that substantial act of the Divine Will, loving Its own Justice and Goodness, Whose Pleroma in the Persons of the Father and the Son, is the Blessed Spirit of Truth.

If, then, those prohibitory statutes, which constitute the subject-matter of the present examination, form any part of the natural law, their obligation admits of no conceivable exception. God has no more power to suspend their action, than He has to suspend His own Goodness.

It is more than unfortunate, therefore, that, on a point of such practically vital importance, Dr. Pusey should maintain an opposite and,—as it seems to us,—most dangerous opinion. He tells us his mind in the following paragraph of his work: “Another more plausible ground,” he remarks, “for denying any marriage, except with mother or daughter, to be against nature, has been that men overlooked the *great principle that God may dispense with His own laws*. Although, then, in order to consecrate the very unity of marriage itself, He

Dr. Pusey:
assertion
the mutuality
of the
eternal law

willed that all mankind should descend from one pair, and in the first generation allowed that which He afterwards forbade, *it was not the less contrary to nature*, so soon as He recalled the permission. *His command can suspend the laws of moral as well as physical nature*; and as He can make poisons harmless, so He could make the union of brother and sister in that generation when there were none besides. Yet as the waters returned to their place, when His command which withheld them ceased, *so His moral law of nature flows on undisturbed, when He ceases to suspend them.*"¹

Protest
against it.

Our readers will excuse us if, under the circumstances, we speak out. In our judgment this opinion is pestiferous in all its length and breadth; and we intend to expose it as such for their reprobation, part by part. No one more sincerely believes than the author of this work, that Dr. Pusey would be among the last to advocate such an opinion, if he saw it in the same light; what we imagine is, that he has been induced, by the nature of the brief which he has accepted, to adopt this view, without taking a glance forward in order to see its lamentable but most inevitable issues.

The idea
absurd, that
God permitted
grievous
sin in itself,
"to consecrate
the
unity of
marriage."

The evidence of Sacred history can leave no doubt on our mind that God permitted polygamy, even among His chosen people, up to the time of the Incarnation. Marriage had not as yet been elevated to the dignity of a Sacrament; for Mary was not yet born. "*The great mystery*"² of S. Paul was still in the womb of the future. Nevertheless, in order, as we are told, "to consecrate the very unity of marriage itself," which had to wait four thousand years and more for its Divine institution, God so ordered in His Providence the first constitution, and,—as resulting therefrom,—the necessary and only means for the propagation of the human race, (whereas it was quite as easy for Him to arrange it otherwise, had He so pleased,) as that it became unavoidable to suspend on His part and to violate on ours, the unchanging law of His own Goodness and sanctity! No concession can be well conceived that would be more profitable to the Atheist, more beset with difficulties and disheartening for one who believes and trusts in God.

¹ Evidence, &c. Preface, p. xxxiii. The Italics are our own.

² Eph. v. 32.

But again : To compare for a moment the suspension of the lordly principles of His everlasting Justice with the suspension of mere physical laws, is a preposterous paradox, and shocks the primary instincts of our moral nature. What to Him Who sits on His high Throne of supremacy in the heaven of heavens, if the laws of gravitation should come to an end, or if the revolutions of the planets should cease, or even were the whole visible creation, by the permission of His will, to collapse into universal ruin ? His infinitely perfect Life would be undisturbed. The river of created life flows at His feet ; but the voice of its current breaks not in upon the silence of His Presence. He lived through an eternity of the past, (as men talk in the imperfect glimpses of their thought), without all these things, in the Magnificence of His own self-sufficient Bliss ; and that they now are, is not His gain, but their advantage,—the exuberance of His communicating Love, not (God forbid !) the indigence of His nature. “The grass is withered, and the flower is fallen ; but the Word of our Lord endureth for ever. . . . Behold, the nations are as a drop of a bucket, and are counted as the smallest grain of a balance : behold, the islands are as a little dust. . . . All nations are before Him as if they had no being at all, and are counted to Him as nothing and vanity.”¹

The analogy drawn between physical and moral law shocks the moral instinct.

But, in that grand Eternity of seeming Solitude, God was not alone. For hearken to the words of Wisdom : “The Lord possessed me in the beginning of His ways, before He made anything from the beginning. I was set up from eternity ; and of old, before the earth was made. The depths were not as yet, and I was already conceived. . . . I was with Him, forming all things ; and was delighted every day, playing before Him at all times.”² If thou askest, child of man, who this was that was with God, the King, from everlasting, no voice but that of inspiration may give the answer : “She is a vapour of the power of God, and a certain pure emanation of the glory of the Almighty God. . . . She is the brightness of eternal Light, and the unspotted mirror of God’s Majesty, and the image of His Goodness. And being but one, she can do all things ; and remain-

¹ *Isaiah xl. 8, 16, 17.*

² *Proverbs viii. 22–24, 30.*

ing in Herself the same, she reneweth all things, and through nations conveyeth herself into holy souls, she maketh the friends of God and prophets. For God loveth none but him that dwelleth with wisdom. For she is more beautiful than the sun, and above all the order of the stars; being compared with the light, she is found before it. For after this cometh night; but no evil can overcome wisdom."¹

Yes; She is one, she remains in herself the same for ever. No evil can overcome wisdom. And she entereth into the souls of men, and makes them friends of God. She "reacheth everywhere by reason of her purity."² And it is she that "teacheth temperance, and prudence, and justice, and fortitude."³ For by wisdom God has appointed to man "that he should order the world according to equity and justice, and execute justice with an upright heart."⁴ Wisdom, therefore, has entered into man's soul, and stamped on it her law, which is herself, "ever remaining in herself the same." Once, then, try to hush the unalterable voice of Her commandments, whether She proclaims them by the natural law "written on the fleshy tablets of the heart," or speaks from Mount Sinai, or legislates in gentler accents from the mountain of Beatitudes,—you touch God in the apple of His eye. The suspension of the natural law is the suspension of God's Rule and Supremacy.

No exigency—especially one self-imposed—could render it possible that God should suspend the eternal law; much less allow its violation to become a custom.

The extremest exigency,—an exigency, in particular, prearranged by Him Who directs all things according to the good pleasure of His Will,—could not suggest any possible reason for the suspension of that eternal law, by which the rational creature is naturally directed to its great and only end. But what are we to say when, according to the theory now before us, these laws of Wisdom are arbitrarily suspended without *apparent* reason even, much less necessity? Yet so it is. Look for one moment at the facts which crop up in the lives of the Patriarchs. Abraham and Nachor his brother married two nieces, daughters of their younger brother Aran. Isaac married his second cousin, or his uncle Nachor's grand-daughter, so that the consanguinity was in unequal degree, as it is called; since he was in the second, his wife

¹ Wisdom vii. 25—30.

² *Ibid.* viii. 7.

³ *Ibid.* v. 24.

⁴ *Ibid.* ix. 23.

in the third degree.¹ Jacob began by marrying his first cousin, Lia, daughter of Laban who was his mother Rebecca's brother. Then he afterwards took for a second wife, his first wife's sister, Rachel, during the lifetime of his first wife; which, as we have seen, was afterwards strictly forbidden by the Levitical law.² Again, Juda gave Thamar, the widow of his eldest-born, to his second son; and on the demise of the latter, promised that he would marry her to his youngest son Sela.³ Amram married his aunt Jochabed; and they had for issue Moses, the prophet of the Lord, and Aaron, the first high priest of the Sinaitic dispensation.⁴ We also read in the Book of Numbers that by Divine command the daughters of Salphaad, "Maala, and Thersa, and Hegla, and Melcha, and Noa, were married to the sons of their uncle by their father,"⁵ i.e. to their first cousins.

To assert that such marriages as these were necessary at that early epoch,—an epoch extending, be it observed, to the time when the tribes were preparing to possess themselves of Chanaan,—or that in some unintelligible way they were the result of a desire to proclaim the unity of marriage, so unkindly illustrated in the married life of Abraham and Jacob, and the general permission of polygamy among the chosen people,—is the baseless fabric of a dream. But if it were all true, still, even then, the necessity must look after itself; and God would find some other way of proclaiming the unity of marriage, that would not involve a habitual violation of His own eternal and immutable law.

To pass, then, from this painful subject, we conclude that there is nothing in Dr. Pusey's inferences from the text itself to hinder us from reasserting our original contention, viz. that the precepts in Leviticus xviii. are judicial;—that they do not, either collectively or, for the most part, individually, form any part of the natural law;—and that, as a consequence,

Recapitulation of the argument connected with the text itself.

¹ Genes. xxiv. 15.

² Ibid. xxvii. 43; xxix. 13, &c.

³ Ibid. xxxviii. 8, 11.

⁴ Exod. vi. 20.

⁵ Numbers xxxvi. 11. It would appear from this passage that the ancient Jews, living in the lifetime of Moses, understood that as the marriage with first cousins was not expressly prohibited, it was permitted, by the Levitical code. They did not, therefore, take Dr. Pusey's view of the sixth verse; and Moses did not think it worth while to correct their misapprehension.

they, in common with the rest of the judicial precepts, have been abolished by Christ, and retain no longer any force of obligation over us by virtue of their primitive Divine institution. It is true that they may be,—as indeed they have been,—re-established by the Catholic Church of Christ; but the law, as such, becomes Ecclesiastical, and subject, therefore, to the dispensing power of the authority that re-imposed it.

I. Dr. Pusey's second kind of argument, from the context.

His statement.

The Oxford Professor has, however, another intrinsic argument in store for us; for he endeavours to prove, from the preceding and subsequent context, that these precepts, so often referred to during the course of the discussion, form a part of the natural or eternal law. We will let him speak for himself in the words which he addressed to Her Majesty's Commissioners. They are as follows: "Since the preamble of these laws (so to speak) is, 'Ye shall not do after the doings of the Egyptians and the Canaanites'; and then Holy Scripture goes on to lay down certain acts which they shall not do, and sums up, 'Defile ye not yourselves in any of these things'; it seems quite plain that these things, here specifically forbidden, were the practices of those nations prohibited generally at the beginning of the chapter." But some of them were practices of Patriarchs and other Jews of the olden time as well. To continue: "But my object in mentioning this, was in proof that these precepts are moral. The chapter speaks of certain practices of the heathen as being abominations, and as defiling the land in which they lived. Then it prohibits certain things, and says, that whereas there were certain practices in Egypt and Canaan which were defilements, they shall not do any of those things. From that I infer that the laws prohibiting them are not ceremonial laws" (who has ever affirmed that they were?), "but that they are judgments of God as opposed to the abominations of the heathen."¹

This latter part of the Doctor's reply is strikingly vague. There is no one who doubts that these precepts are judgments or laws of God, or that some one or two of them are *de facto* opposed to what were abominable heathen customs. However,

¹ Evidence, &c. n. 428, p. 5.

we must interpret the latter clauses by the former, which are more clear; and, if we understand his words aright, the contexts in Levit. xviii. are represented to furnish us with two proofs that the prohibitory precepts, interposed between them, form a part of the natural law.

The first is derived from the fact that, while in the preface the chosen people are forbidden to follow the customs of Egyptian and Chanaanite, in the postscript,—so to say,—they are warned not to defile themselves in any of these things.

The second proof is based on the fact, that God describes the opposite practices of circumjacent nations as abominations, and as defiling the land in which they lived. In a word, it relies on the peculiar strength of expression used in condemnation of the practices supposed to be aimed at. This fact seems to have made an unusual impression on Dr. Pusey's mind; for he more than once returns to it. Thus, for instance, he remarks, "What Holy Scripture terms 'an unclean thing,' as it does the marriage with the deceased brother's wife, is surely not a political, but a moral offence."¹ So again: "First of all he" (*i. e.* S. Basil, though why S. Basil's Greek is brought forward to illustrate Old Testament Hebrew, we do not altogether understand,) "speaks of it as being something unheard of, which people would shudder at, which is the same expression nearly as that of Holy Scripture, נִדָּח the same word which the Holy Scripture uses as to a brother's marriage."² Once more: "A marriage with a brother's wife is directly prohibited in this chapter; and it is also spoken of in the 20th chapter of Leviticus, ver. 21, as being in itself something abhorrent (which I think I have not mentioned in my pamphlet). The word is one very strongly expressing that it is an abominable thing in itself, unless Almighty God dispenses with it in any case. He Himself speaks of it in Leviticus chap. xx. ver. 21, as being an abominable thing. What then Almighty God so speaks of in His word, cannot cease to be so."³

The first argument, constructed on the fact and nature of

i. Argument.
The antecedent and subsequent context refer to evils among the surrounding nations,—evidently against the natural law.

ii. Argument.
From certain strong expressions in the subsequent context.

¹ Ibidem, p. xxvii.

² Ibidem, n. 445. pp. 11, 12.

³ Ibidem, n. 494. p. 8.

first argu-
ment.
1. It collaps-
es by its
own weight.

preface and supplement, either proves too much, or proves nothing. For if the preface at the beginning, and the postscript with which the chapter closes, form,—so to speak,—marks of parenthesis, within whose embrace every precept is determined, by virtue of its enclosure, to belong to the natural law, then the precept in the eighteenth verse, (which Dr. Pusey confesses to be merely judicial) and the other in the succeeding, or nineteenth verse, (which all Christendom practically maintains to have been merely judicial likewise), must form a part of the eternal law, as being included within the brackets. If once it is granted that one even of these two statutes is not included in the natural law, the whole argument, as is plain, collapses.

b. The ab-
sence of
these con-
texts in the
Decalogue,
a proof
against it.

But again; if such concomitants are so sure and becoming a sign of the promulgation of the natural law in whole or in part, does it not seem strange that the Decalogue,—which, in the unanimous judgment of all those who believe in the inspiration of the Old Testament, gives, by a Divine promulgation, the first principles of that law,—should not have been enshrined in similar forms? Yet, on the contrary, nothing can be more grandly bare and simple than the way in which these great commandments are expressed and announced.

c. It ignores
the general
construction
of the Leviti-
cal code.

There is another vital objection, as it strikes us, to this proof. It seems utterly to ignore the general construction of the Levitical code. We have already alluded in passing to this point; but it merits further attention. It would almost appear as if there were a set purpose in the arrangement to which we allude; for it occurs so frequently as to assume the features of a law. We allude to the constant intermingling of moral, judicial, and ceremonial precepts in the same chapter of the Divine code; while all along the same structure of enunciation is preserved, giving us no inkling of any specific difference of nature. Take the place in Exodus, by way of illustration, where the ten commandments are recorded, and a description is given of the supernatural prodigies by which their promulgation was accompanied. Immediately thereupon, because of the terror with which the assembled people were stricken, Moses is recorded to have entered alone "into the dark cloud wherein God was"; and while there, "The Lord

said to Moses, Thus shalt thou say to the children of Israel. You have seen that I have spoken to you from heaven. You shall not make gods of silver, nor shall you make to yourselves gods of gold (a moral precept). You shall make an altar of earth unto Me, and you shall offer upon it your holocausts, &c. . . . I will come to thee, and will bless thee (a ceremonial precept). And if thou make an altar of stone unto Me, thou shalt not build it of hewn stones; for if thou lift up a tool upon it, it shall be defiled;” (תִּתֵּן), the same verb which is used in Genes. xlix. 4, as descriptive of the worst form of incest).¹ Here we have once more a ceremonial precept; and the like again in the succeeding verse. Immediately after this, we have a string of judicial precepts; as, *e. g.*, “If thou buy a Hebrew servant, six years shall he serve thee; in the seventh he shall go out free for nothing.” Then comes this law: “He that striketh a man with a will to kill him, shall be put to death”² (which is a moral precept, though its sanction is judicial). So again, a little further on, “If thou take of thy neighbour a garment in pledge, thou shalt give it him again before sunset (a judicial precept). Thou shalt not speak ill of the Gods; and the prince of thy people thou shalt not curse (a moral precept). Thou shalt not delay to pay thy tithes, &c. (a ceremonial precept). You shall be holy men to me; the flesh that beasts have tasted of before, you shall not eat, but shall cast it to the dogs (a ceremonial precept). Thou shalt not receive the voice of a lie; neither shalt thou join thy hand to bear false witness for a wicked person” (a moral precept).³ We will proffer one more instance from another book of the law. In Leviticus xix. we have a moral and ceremonial precept in the same verse, to begin with:—“Let every one fear his father and his mother (a moral precept). Keep my Sabbaths. I am the Lord your God” (a ceremonial precept). Then follows: “Turn ye not to idols, nor make to yourselves molten gods. I am the Lord your God (a moral precept). If ye offer in sacrifice a peace-offering to the Lord, that He

¹ Exod. xx. 21-26.² Ibid. xxi. 1-12.³ Ibid. xxii. 26-31; xxiii. 1. See the following verses of this chapter to the end.

may be favourable, you shall eat it, &c. (a ceremonial precept). When thou reapest the corn of thy land, thou shalt not cut down all that is on the face of the earth to the very ground; nor shalt thou gather the ears that remain, &c. (a judicial precept). You shall not steal. You shall not lie; neither shall any man deceive his neighbour" (moral precepts). Then follows a string of moral precepts for seven verses; upon which appears a ceremonial precept, already quoted, about commingling of breeds, or of seeds in the field, or of materials in the vestments, which are ceremonial.¹

Summary of
the reply.

If we consider, then, this apparent rule, in the Divine legislation, of habitually mingling together those three classes of precepts, and remember that precepts, thus strung together, are often included in the same hortatory parenthesis, and exhibit an identity of structure, the whole weight of Dr. Pusey's argument will be seen to tell against the position which he is so anxious to maintain.

ii. Second
proof in-
cludes,
III. Argu-
ment de-
rived from
parallel
passages.
i. Strong
expressions.

The second proof, or confirmation, which the Oxford Professor submits in support of his theory, is derived from the strength of certain expressions with which some of these incestuous marriages,—and those, not by any means the worst or most repulsive,—are denounced in the inspired pages. The argument introduces us to a new fountain of evidence; for the terminology of Leviticus xviii. is illustrated by the help of other Scripture texts, parallel either in the identity of their subject-matter, or in the peculiar wording of their condemnatory clauses. According to our wont, we will let Dr. Pusey speak for himself. In answer to a question from one of the Commissioners, already quoted in these pages, "Do you put upon the same footing marriages of persons connected by consanguinity and by affinity?" he replies: "Yes; I regard them as the same—of course not the same in intensity, but equally prohibited. Of some forms of incest with those connected by affinity, Holy Scripture speaks as strongly as of incest with those of the same blood. Thus in Lev. xx. 12, incest with a daughter-in-law is pronounced 'confusion,' contamination. It is the same word used in Levit. xviii. 23,

Dr. Pusey's
statement,
with com-
ments.

¹ Levit. xix. 2-19.

of sodomy." [This is an error.¹] "And incest with a wife's daughter, or her son's daughter, or her daughter's daughter, or her mother, are called 'wickedness,' Lev. xviii. 17; xx. 14, a word used of the foulest sins of the flesh, as of 'adultery,' in Judges xxxi. 10" [As there are only twenty-one chapters in the Book of Judges, there is some mistake here. The Doctor possibly refers to Job xxxi. 11], "of the abusing of the woman (Judges xx. 6), of which it was said (Judges xix. 30), 'There was no such deed done or seen from the day that the children of Israel came up out of the land of Egypt';" [To be quite accurate, Dr. Pusey should have told us, that the crime in question was a rape committed on a married woman with such violence as to cause her death almost immediately, owing to the injuries received. Does not all this prove too much? for what becomes of the greater *intensity* in cases of consanguinity, if such is the native power of the word?] "and in Ezek. xvi. 43, as a stronger word than even 'abomination.'" [This is at least dubious; as we shall presently see.] "The same word is used in Ezek. xxii. 11, of incest with the daughter-in-law." ²

We subjoin the following critical note on the passage quoted from Ezechiel (xvi. 43). The Hebrew text reads thus:

A parenthetical note.

וְלֹא עָשִׂיתִי אֶת־הַזִּמָּה עַל־כָּל־תּוֹעֲבוֹתַיִךְ. The Septuagint version has it, καὶ οὕτως ἐποίησας τὴν ἀσέβειαν ἐπὶ πάσαις ταῖς ἀνομίαις σου. De Wette's German translation renders על by zu; Luther's German, in; the Vulgate, in omnibus abominationibus tuis; the Douay, or received Catholic version, in all thy abominations. The Protestant authorized version is the only one that gives the slightest authority for Dr. Pusey's assumption; for it gives the phrase thus, "and thou shalt not commit this lewdness above all thine abominations," though here the preposition, *above*, may be assumed in the sense of *beyond*, in addition to. The origin of the change in the person of the verb, common to the Septuagint and English Protestant versions, is not apparent; but we pass it by, as

¹ Gesenius has fallen into the same mistake. The Hebrew word employed to designate this crime both in Levit. xviii. 22, and xx. 13, is תּוֹעֲבָה מְבֹלָה is employed however in Lev. xviii. 23 to designate a crime still more heinous.

² Evidence, &c. n. 433. p. 7.

irrelevant to the question under discussion. There is no doubt that the Hebrew preposition is used in the sense of *above*, *surpassing*, as well as in that of *beyond*, or *in addition to*; but the context, as well as the vast preponderance of authority, seem to exact our acceptance of the latter.

But, to return to Dr. Pusey's statement of his case: He seems to attach a similar importance to the word נִרְיָה, which he explains to mean "something unheard of, which people would shudder at," or what is akin to that; and is used "as to a brother's marriage" in the Holy Scripture. We presume that Dr. Pusey refers to a brother's marriage with his brother's wife, as forbidden in Levit. xx. 21. Further, in one of his answers already quoted he says, "The chapter speaks of certain practices of the heathen as being abominations, and as defiling the land in which they lived." We must conclude, therefore, that he lays equal stress on the two words employed there;—תוֹעֵבָה (Levit. xviii. 26, 27, 29) and עֶוֹן (verse 25).

Four words
especially re-
ferred to by
Dr. Pusey.
Explanation
of meanings.

That our reply to this last argument may be more clear, and more complete, we will review these words in order.

i. תוֹעֵבָה is undoubtedly used in Leviticus xviii. 23 for the worst and most unnatural among carnal sins. Further, it is beyond all doubt that the precept, which forbids it, appertains to the natural or eternal law. It is also true that this same expression is applied to marriage with a daughter-in-law in Leviticus xx. 12. According to Gesenius, its root is טָוַעַל, which signifies, to *pour over*, or *wet*, thence, to *stain*; from which comes its true meaning, *pollution*, or *profanation*. The Vulgate translates it in both places by the word *scelus*; the Septuagint version translates it in the first place by *ἀδικία*, *unrighteousness*; in the second, by *ἀκαθαρσία*, *uncleanness*. The Rheims in the former place gives it as, *a heinous crime*; in the latter, as *an unlawful thing*. The English Protestant has it in the first place, *confusion*; in the second, *an unclean thing*.

ii. זִמָּה is employed to describe the sin of marrying with a daughter-in-law in Ezekiel xxii. 11; with a step-daughter

or a step-granddaughter in Levit. xviii. 17; with a mother and her daughter together, in Levit. xx. 14. It is true also, as Dr. Pusey remarks, that the same word is used of other sins of the flesh, more than usually grievous. Its root is **חָבַל**, to meditate, or devise; hence *wicked device*, *wickedness*. Yet, though especially applied to sins of uncleanness, (see Ezechiel xxii. 9–11), it is also not unfrequently employed in its generic sense of wickedness deliberately planned; as in Psalm xxv. (Heb. and Eng. xxvi.) 10; and Ps. cxviii. (H. and E. cxix.), 150; where the Septuagint translate it by *ἀνομία*, *lawlessness*; the Vulgate, by *iniquitas*; Rheims, by *iniquity*; the Protestant version, by *mischief*.

iii. **תועבה** is a word used in Levit. xviii. 22 of a grievous unnatural offence; as also in Levit. xx. 13. It is also employed to express the sin of adultery in Ezechiel xxii. 11; and of the catalogue of sins prohibited in Levit. xviii. indiscriminately and vaguely in vv. 26, 27, 29. It is most frequently however selected to express the sin of idolatry, and idols themselves: as in Deuteronomy xxxii. 16; and 4 (*aliter* 2) Kings xvi. 3; xxi. 2. It is used of certain mischievous tendencies of hatred in Proverbs xxvi. 25; where the English Protestant version gives for its translation the word usually employed by it for this Hebrew word, viz. *abominations*. It represents also the sin of unjust measures, Deut. xxv. 16;—of a false balance, Prov. xi. 1;—of seven things which the Lord detests, Prov. vi. 16;—of its being an *abomination* to fools to depart from evil, Prov. xiii. 19;—of an unjust man being an *abomination* to the just, and the just an *abomination* to the wicked, Prov. xxix. 27;—of a *froward* person, Prov. iii. 32;—of incense being an *abomination* to the Lord, Isaiah i. 13;—of shepherds, as being an *abomination* to the Egyptians, Exod. viii. 22 (Eng. Prot. 26).

We can trace its primary idea all through these different shades of meaning. Its root is **תָּעַב**, to *abhor*, or *abominate*. Anything therefore in the moral, ceremonial, social, or even physical order, which was calculated to excite loathing or disgust, would be, as it has been, aptly represented by this noun. It cannot help us, therefore, in determining the species of

criminality attaching to a sin, or the nature of the law that prohibits it.

4. נָדָה. This substantive is derived from the verb נָדָה,—to move, move away, or remove; hence, something removed as unclean or filthy. It is used to express, as Dr. Pusey says, the marriage with a brother's wife in Levit. xx. 21. But we find it employed also in the case of physical or bodily uncleanness in Zacharias xiii. 1; and in Ezechiel xxii. 10 (In the former passage the Septuagint aptly render it εἰς τὸν χρωτισμόν); as also in Levit. xii. 2, 5; xv. 19, 20, 24, 25, 33. Hence it is used of anything unclean, 1 Esdras ix. 11, twice; so of idols in particular, 2 Paralip. xxix. 5. Its radical signification is plain enough all through. Hence, according to a Rabbinical tradition, the word in Levit. xx. 21, denotes that the brother's wife is in a relation to her brother-in-law, analogous to that in which a woman stands to her husband, according to the judicial precept of the Mosaic law, in her separation of uncleanness. As in the latter instance cohabitation was permitted after her purification; so in the former it was allowed,—and was, therefore, no longer unclean,—to marry the brother-in-law after the demise of her husband without issue. We think, then, it may fairly be assumed that Dr. Pusey's paraphrase of the word is unusually rhetorical, when he assures us that it means "*something unheard of, which people would shudder at.*"¹

Now that our facts are sufficiently grouped, let us summarize the evidence; and see what it is worth. Therefore,

a. There is but one precept, in the code to which all along Dr. Pusey is making his appeal, that is characterized by any one of these epithets. We are, of course, now referring only and solely to the prohibitions of marriage. That precept is directed against marriage with a step-daughter, or a step-grand-daughter (Levit. xviii. 17). Such marriage is con-

Summary of
the evidence,
and refuta-
tion of Dr.
Pusey's
argument.

¹ Karl Friedrich Keil classifies these epithets according to their force of expression:—i. זָכָה, *scelus nefandam*, ii. תָּבַל, *commixtio peccaminosa*, iii. תָּסַר, *dedecus*, iv. נָדָה, *immundities sexualis conditionate tantum prohibita*. Handbuch der biblischen Archäologie, ii. p. 59, et seqq. Dr. Pusey has been unfortunate in his selection of this particular word for the expression of his shudder-causing and unheard-of delinquencies.

demned as *רָמָה*,—*wickedness*, or a *wicked device*, or, as it very often means, *uncleanness*. Why this precept should have been thus specially signalized, it is difficult to say; but the fact remains, that all the rest are free from any such note. In the same catalogue, however, two unnatural offences are prohibited; and each is marked with one of the above words of reprobation.

b. The whole catalogue seems in the supplement to have been characterized three times by the epithet *תּוֹעֵבָה*, *abomination*. But it is more than probable that this thrice-repeated expression refers to the last four precepts, of which the first prohibits adultery, the second, offering of children to Moloch, and the last two prohibit the horrible offences already alluded to. For the condemnatory words, found in this postscript, have been already used in the four precepts, and are, as it were, repeated. It were well for Dr. Pusey if he could reconcile himself to this explanation; for otherwise he affords us a third self-contradiction on the subject of one and the same precept. If these epithetic substantives are a seal consecrating to the natural law all the precepts they touch; and if this one in particular is to be applied to all those precepts that fall within the brackets of preface and postscript, then the eighteenth verse, which Dr. Pusey has decided to be judicial and done away in Christ, must belong to the natural law with the rest,—to say nothing of that other injunction in the nineteenth verse, which no one would ever be so mad as to ascribe directly to the eternal law.

c. These peculiar expressions of reprobation multiply in the recapitulation of the prohibitions against such incestuous marriages, made in the twentieth chapter of the same book. Thus we find the first in the above list employed to denounce marriage with a daughter-in-law; the second, to designate a digamous union with mother and daughter; the fourth, in condemnation of marriage with a brother's wife. There is, besides, another word introduced which has not appeared in our catalogue, in order to express the Divine reprobation of marriage with a step-sister.¹ It is *רָמָה*. The Vulgate has it, *rem nefariam*; the Septuagint, *ὁνειδός ἐστιν*; the Rheims, *a crime*; the English Protestant, *a wicked thing*. Its root is the verb

¹ *Levit. xx. 17.*

חַסֵּד, which primarily means, to *love* or *desire*; but in Piel, to *put to shame*. Hence the noun has similarly a double meaning; in a good sense first, its more ordinary signification of *love*; then in the sense of *envy*, a *reproach*.

Dr. Pusey
of service in
helping to
refute his
own argu-
ment.

His state-
ment, with
comments.

It is worth while trying to discover any cause for this striking difference between the two recitations of the same catalogue of precepts; and Dr. Pusey will be of great service to us in our investigation. For he gives us a clue, in one of his answers to the Commissioners, which we will set before the reader, not because we believe it to be wholly accurate, but for the sake of a little ray of light discoverable there, and because it will enable us to estimate by the Doctor's own opinion, the value of his argument. He is asked, "Have you anything further to add with respect to these marriages being prohibited by the words of Holy Writ?" The Doctor replies: "No. I regard these prohibitions as being moral" (*i. e.* forming part of the natural law. Dr. Pusey's terms are occasionally very ambiguous;) "and so universally binding, both on account of the way in which these marriages are introduced in connexion with other acts which are offences and outrages against nature";—(we confidently assure ourselves that this argument has been put to death;) "and on account of its being so emphatically repeated and impressed (v. 4, 5, 26, 30), as is the wont of Holy Scripture in things of greatest moment" (as, for example, in the promulgation of the ten commandments, Exod. xx. 1-17; or the prohibition of blasphemy, Lev. xxiv. 15, 16. See the collocation of this precept), "that these acts are contrary to the laws, ordinances, and statutes of Almighty God (terms not confined to the ceremonial law)." Whoever thought or affirmed that they were? But neither are they confined to the precepts specially called moral; which Dr. Pusey's argument evidently postulates. "It is to be observed also, that these laws are given distinctly from the judicial laws which follow in the 20th chapter. Here Holy Scripture lays down positively these as things not to be done. What is proper to the Levitical law is in another (the 20th) chapter, where the same degrees are mentioned again, and a penalty annexed to intermarriage with them."

¹ Evidence, &c. n. 435. p. 9.

Now we rejoice in being able to agree with *nearly* all that is contained in these last sentences of Dr. Pusey. Both the catalogues belong to positive law ; both are judicial precepts. But there is a notable distinction between them, to which Dr. Pusey has directed attention. The precepts in Leviticus xviii. are given as bare significations of God's will ; as if,—so to speak,—they were a preamble to the canons or statutes that were to follow. In Leviticus xx. we have the canons, or laws, with their separate sanction attached. *There* consequently they are formally promulgated as judicial precepts ;—the name which the Doctor most correctly gives them.

But then, what becomes of his epithetic argument ? According to him, the code in Leviticus xviii. forms part of the natural law ; the same code is in Leviticus xx. transformed into a series of judicial precepts. The substantives of denunciation are produced in court as marks of identity by which the natural law may be recognized ; and they all, with one exception, attach to the judicial precepts, not to the supposed enunciation of the natural law.

For our part, there appears a probable reason for their insertion in the former catalogue. For, as it was there and then that these positive laws were fully promulgated, God condescended to give His people a reason for them, by bringing out into relief the moral principle of which they were an application, so that the observance of them might be made easier.

d. If these nouns of reprobation are the Divine signature authenticating the precepts of the natural law, is it not passing strange that not a single one of them presents itself in the midst of the ten commandments ?

e. Is it not furthermore very curious, if Dr. Pusey's theory be true, that marriages with a daughter-in-law, step-daughter, step-grand-daughter, step-sister, and brother's widow, (the last of which was, under certain circumstances, enjoined by Divine commandment) should have been picked out for animadversion ; while marriages with a mother, sister, step-mother, are passed by, unnoticed ? On our hypothesis concerning the introduction of these designatory nouns, the reason is plain. The incestuous irregularity of these unions was not so obvious to the Jews ; and, therefore, they were specially selected.

So this last argument goes with the rest; and Dr. Pusey will forgive us if, while contemplating this accumulation of terrifying substantives from the Old Testament and from S. Basil, who looks as if he were intended to stand proxy for the New, we are reminded of O'Connell's victory over the well-known virago in Dublin.

i. An amplification of the precepts in the Prophet Amos.

There is one other parallel passage brought forward by Dr. Pusey, which we can dismiss in a very few words. The Doctor writes, "Again, a yet broader application of the principle of the prohibition, 'none of you shall approach, &c.,' is contained in Amos ii. 7, where a defilement of a different sort, not prohibited in express terms in the law, nor anywhere else in the Old Testament, except on the principle of this verse, is rebuked in God's Name, as a wilful pollution of His Holy Name, as sin with a high hand, which men must have known to be offensive to God."¹

Our answer is as follows:—

Answer.

i. Even if the sin were not one of fornication or adultery, the act itself is expressly prohibited by the two precepts in Levit. xviii. 7, 15;² for the law applies equally to illicit as to licit connection.

ii. Its being rebuked "*as sin with a high hand*," appears neither in text nor context.

Conclusion of the Scripture argument.

We have now passed in review the principal arguments, adduced by Dr. Pusey, in favour of his contention that the matrimonial prohibitions in Leviticus form part of the natural law; and we feel confident that the impartial reader will agree with us in returning a verdict of

NOT PROVEN.

¹ God's Prohibition, &c. p. 12.

² Cf. Tirinum. ad loc.

CHAPTER II.

IS IT TRUE THAT, "IN THE DELIBERATE JUDGMENT OF THE CHURCH FOR FIFTEEN HUNDRED YEARS, LEVITICUS XVIII. WAS SUPPOSED TO BE PART OF THE MORAL LAW AND UNCHANGEABLE"?

BEFORE entering upon the immediate subject of this chapter, our readers will excuse us if,—in view of the particular shape which the controversy with Dr. Pusey is about to assume,—we have a word or two to say about the use and understanding of Patristic literature.

Introductory remarks on Patrology.

Within the large circumference of extrinsic evidence there is not,—we will venture to say,—a more fruitful source of error, sophisms, and self-delusion, than the writings of the Fathers. So long indeed as the student confines himself to treating their voluminous works as mere subjects of linguistic criticism, or as witnessing to manners, customs, ceremonies, either civil or Ecclesiastical, prevalent in their time, no particular difficulty is likely to arise beyond those which these works would share with others, written in a dead language, and at a remote period of time. But no sooner are they pressed into the service of religious controversy, than they are made to do duty for every one who likes to consult them; most especially for those who have made a more or less cursory acquaintance with their contents, for the express purpose of bolstering up some new form of heresy and schism. Of course, the mere fact that they are simple documents practically inaccessible to the greater number, and that,—like all other documents,—they have no living voice to protest, explain, or modify, partially contributes to the evil. There is a story told of a renowned warrior-king, who had a great weakness for painting portraits, and the greater weakness of thinking himself an adept in the art;—an opinion, be it ob-

It is a fruitful source of sophisms, it be not studied under guidance.

served, which was confined exclusively to himself. It was his wont to try his genius on the officers about him; and, being often obliged to confess to himself that the likeness was sufficiently remote, yet determined in the iron fierceness of his will not to be beaten, he must needs use his brush with freedom on the living models, so that if the portrait was not like the man, at least the man should be like the portrait. A similar process has been tried again and again upon the Fathers. The brush and easel have been unscrupulously worked in the neoteric studio; so that if the new gospel is utterly unlike Patristic teaching, Patristic teaching may be daubed up into a sort of resemblance to the new gospel.

But this assimilating process is no patent; nor are the Fathers the only plates prepared for receiving the negative. The art is as old as time itself; and all that is written or printed is liable to be so treated, because it lies quite passive in the hands of its temporary possessor, and cannot vindicate its own genuine meaning in case of perversion.

It is true that Patristic literature affords abundant opportunities for the exercise of this portrait process; for the Fathers were men like ourselves,—enriched with no special gift of infallibility,—living, most of them, in simpler times, when Theological terminology was comparatively rude and vague, all of them, before Theology had assumed its subsequently clear and scientific form,—the greater number directed by an Ecclesiastical law as yet in its infancy,—catechized in a creed which, though containing *implicitly* all the mysteries of the faith, and therefore *substantially* identical with that of Pius IV., was nevertheless short in its *explicit* statements and as regards the number of its articles—men, too, with passions, infirmities, prejudices, like the rest of mankind. Consequently we here and there come across expressions in their writings, capable of giving a specious colour to strange doctrine, which they, who wrote in all the simplicity of their docile faith, would never have let pass, could they have but divined the future. In all of them with one exception,—that of the great Eastern Doctor, S. Gregory Nazianzen,—may be found expressions, difficult of Catholic treatment, which, perversely misinterpreted, have been adopted by heretics of a

writings
ject to be
dealt
1.

nature
'astrology
and itself
sch treat-
it, as
ntific
ology
then in
nancy.

The one dispensation of his still on record.

History.

Denmark and Sweden had unhappy war for the disputed possession of yet their respective kings, Waldemar of Denmark were related to degree of consanguinity. In order to a sanguinary quarrel, a marriage was made between Waldemar and the Princess Sophia of Sweden, monarch, with proviso that the country was yielded up to the former as the dowry was a happy one; and the proposition was accepted by both parties. But there remained to be overcome, viz. the impediment of consanguinity. Accordingly the two kings applied to the Pope for dispensation; and Alexander IV., by a bull dated A.D. 1259, addressed to the Archbishop of Upsala, granted their request, in the expectation of benefits likely to accrue by the marriage. The nations and the whole of Christendom were alarmed. Denmark and Sweden gave a general alarm of incursion from the barbarian north. The danger grew from the ground as a lava marriage, confronting with its steep sides the sea.

genius of the Western Church stands forth at once as the champion of orthodoxy, not only in relation to those mighty controversies of the time, on which his words were stereotyped by infallible authority as canons of faith, but likewise with respect to those very mysteries wherein disciple of Calvin and Jansenist have abused his name as an authority for their most pernicious errors. On the other hand, private judgment is, in some respects, more baneful when exercised on Patristic, than on Scriptural teaching. In the former case it is so easy for a man to delude himself into the belief that he is submitting to the authority of an authorized guide; while he is in reality only following his own caprice; for he is,—unconsciously, it may be, but effectually,—painting the Fathers very abundantly from his own pallet, and so giving to them the varying colour of his own conceits. The volumes of the Fathers constitute a library; and the only key that opens it is a golden one on the bunch that hangs from Peter's girdle. Learning of itself will not do; patient labour of itself will not do; a pure and honest intention, directed to the discovery of their meaning, will not suffice. All these things are good; nay,—if you will,—necessary; but they are not enough. A man must be a Catholic himself, in order to interpret Catholic Saints aright; and he must be a student in the Catholic Schools, as a rule, to understand the Theology of Catholic Fathers, or to be able to distinguish the Divine Tradition enshrined in their pages, from what is properly and exclusively their own individual opinion.

And now for the work that is set before us. It is in truth a sorry task, keeping us pent up for so long in a controversial atmosphere; but is there not a cause?

Dr. Pusey has not been successful in consolidating his position by the authority of the Sacred Scriptures. They afford no clue to the solution of the one question with which we are at present concerned. For no passage, as yet adduced, has helped us in determining whether all degrees of consanguinity and affinity are forbidden by the natural law; or, if not all, how many, which and why? In fact the Doctor is compelled himself to abandon the Levitical Catalogue as a complete and exhaustive enumeration. For he confessedly admits, and himself makes, sundry additions to it; and, when pressed to

ingers
'ate
ent as
le
in
ng it.

nption
'argu
'usey's
tural
ation,
ure.
ld
ion
s back,
is of

...further advantages to the
the case has been exposed to
dear son in Christ the illustrious
Our dear son Lord Baldwin de
Christ the offspring of the said
offspring of the aforesaid Baldwin
third and fourth degrees of consanguinity
yielding to the prayer of the said
authority of these presents authentic
declaration about the said degrees
and you otherwise deem it expedient
affairs in the Holy Land), by virtue
a dispensation permitting the said
be mutually joined in marriage, notwithstanding
ment. Given at Perugia, March 17

iii. A curious
dispensation.

iii. The third recorded instance
this Pontificate is so curious and
require a historical introduction.

¹ "PATRIARCHÆ JEROSOLYMITANO. Providentiam
nem excellentium personarum advertens, &
incolta devotio favoris & gratiæ plenitudinem
reputat, immo potius debitum arbitratur, et
nunquam aliis interdixit, maxime enim ex
ditur. Insuper."

"But according to the ordinary sense of the word, 'kin'" urges the perspicacious Commissioner, "rather implies connexion by blood, does not it?"

"Yes," says the Doctor, "although in God's word it [the word kin?] does contain 'affinity' also, and some kinds of incest by affinity are condemned as strongly as those against blood."

"In that respect," continues the Commissioner, persevering in his point, "it would be difficult to say that first cousins were not 'near of kin'?"

Dr. Pusey is at length forced to be explicit, and, as far as may be, clear. He replies in this sort: "I suppose it was left to the Church at the time to decide what were included under the general words, 'near of kin'; and the Christian Church, as it was required to be stricter as to polygamy and divorce"—(what possible connection,—causal connection, we mean,—is there between the two? One would antecedently judge, that the prohibition of polygamy and divorce might rather be a reason for relaxing the extent of prohibited degrees than extending them;—) "so it interpreted the 'prohibited degrees' more strictly than the Jewish." (How can you interpret without the subject of interpretation?) "The general law was to forbid what was 'near of kin'; and then the existing authority at the time determined what 'near of kin' was."

Dr. Pusey cannot even yet free himself from a certain vagueness of expression. The Commissioner pierces it; and presses him with the following question: "By the 'existing authority at the time' you mean the authority of the Church at the time?" Then the Doctor's reply is summary. He answers, "Yes."¹

is obliged
to abandon
Scripture
evidence,
and seek for
reply to
the question
from the
Church.

Thus, by aid of a little catechetical pressure, the Oxford Professor is drawn to abandon, virtually at least, the conclusion which cost him the pains of all that elaborate intrinsic argument. He now tells us, in effect, that the Levitical code merely enunciates a general principle, which he calls a law; though if it were a law, it could induce no obligation, because it announced no specific prohibition. But the determination of the

¹ Evidence, &c. nn. 455-458. pp. 16, 17.

term, kindred, and the selection of the particular degrees to be prohibited in accordance with the general Divine rule, were left to Ecclesiastical, *i. e.* human legislation, and might vary according to the varying exigencies of different epochs. The Jewish, or Divine prohibitions, were comparatively lax; while those of the Catholic Church were more severe. But, if these premisses are true, it follows, as a necessary consequence, that the whole of the precepts are for us purely Ecclesiastical, and not, save historically and virtually, Divine. Fortified by this generous though tardy admission, we are prepared to ease him considerably of that which weighs most heavily upon his mind in the matter of his first Papal contradiction. For if the authorities of the Church have the power of fixing the particular degrees of consanguinity or affinity within which marriages are prohibited by Ecclesiastical legislation, it is plain that the same authorities could legitimately grant a dispensation, for sufficient reason, from their own established laws.

This admission solves his Papal contradiction.

But then,—just as we fondly hoped that our controversy with Dr. Pusey was more apparent than real, and that consequently it would be easy to establish a convention,—there comes a puzzling passage in the preface to his evidence, which disappoints our hopes. For he says there, that “the Church has no need to lay down the impediments to such incests as are forbidden in Leviticus, because this was her own code, in which they were already laid down for her. There is no such list, then, in the Church, out of the Bible, as is contained in the Bible, or (in its degree) in the Roman law.”¹ The exact meaning of this last clause, more than oracular in its obscurity, we profess ourselves quite unable to determine.

A passage inconsistent with this admission.

However, the important point is, that Dr. Pusey asserts the special prohibitions in Leviticus to be *ipso facto* the Church’s code. Yet, in his answer to the Commissioners just quoted, he declared that the special prohibitions were left to Ecclesiastical legislation, while the Divine or Levitical law supplied us with the general principle. Does he, then, mean that as regards the special prohibitions in Leviticus the Church is not

He seems to maintain that the special prohibitions in Leviticus are not subject to the Church’s legislation, but only degrees not mentioned

¹ *Evidence, &c. Preface, p. lxiii.*

there. The two positions incompatible.

free; but that in all the degrees not named expressly there, She is free to determine? But, if so, why is he so severe about dispensations granted for the marriage of uncle and niece? What is the express object of the works which we are passing under review? Is he not there maintaining, that marriage with a deceased wife's sister is equally prohibited by the natural law as those which are forbidden in Leviticus? Yet neither of these unions is prohibited in the Mosaic law. Does he urge that they are virtually forbidden, and therefore not within the Church's liberties? Then we seriously press him to give a satisfactory answer to the Commissioners' questions, and to tell us why first cousins, who are in the same degree and same line of consanguinity with uncle and niece, should not be ranked among those kindred whose union in marriage is virtually prohibited by the Levitical law? But do not let us have these perpetual changes of strategical position. Do not tell us, now that these specific prohibitions are Divine, now that they are Ecclesiastical. It has been printed plainly enough, "God's prohibition of the marriage with a deceased wife's sister"; we desire to know, why it should not be also, "God's prohibition of the marriage with a first cousin." And we should like further to know, why it may have been "a slip of memory in St. Ambrose" to declare that such marriage with a first cousin was prohibited by God's law, in any sense in which it may not with equal justice be insinuated that it was a slip of memory in Dr. Pusey to declare the marriage with a deceased wife's sister to be so forbidden.

However this may be, we will do our best out of these antagonistic elements to set together a theory which may represent the mind of Dr. Pusey on this subject. We will do our best; and if we fail to give his meaning, he really must not lay the blame on our shoulders. At all events we will not insert one proposition, which is not either expressly or implicitly contained in his pages.

Statement of Dr. Pusey's theory, so far as it can be ascertained.

The Divine Legislator, in His Sinaitic code, laid down a general principle concerning marriage between relations, whether by blood or by affinity. He, besides, specified certain prohibited cases in particular, nobody can tell why. But He intended the prohibition, embodied in the general

principle, to embrace a number of other cases, supposed, therefore, to be virtually contained in the precept of the sixth verse. We have thus, from the very nature of the law, a clearly defined division. The general precept, and all the particular precepts recorded in Leviticus,—with the exception of that inconvenient one in the eighteenth verse, which, Dr. Pusey assures us, is a judicial precept,—form part of the natural law. Moreover, there are others which, unmentioned by name, have a right to be there by virtue of concomitance. These too, according to explicit statements of the Doctor more than once repeated, must be included in the eternal law, which is unchangeable. If it be asked, what they are precisely, and how we are to know? we receive for answer that they are those degrees alone which, unsignalized in the Pentateuch, are to be found in the table of prohibited degrees, published to the Christian commonwealth by the English Establishment.

But then comes the second question; How are we to know that this is so? On whose authority are we supposed to accept the statement that all these, and none but these, were virtually included in the general Divine prohibition, and consequently form part of the eternal law? Well, there is, first of all, “the Church of England”; and the Anglican Establishment, in this as in other things, is a faithful representative of the Primitive Church. For fifteen hundred years the Catholic Church has taught that the prohibitions in the Anglican table, and none but these, are forbidden by God, and that those prohibitions form a part of the eternal law.

For the rest,—how far kindred is supposed to extend, and to what degrees the general prohibition may be fairly extended,—all such questions are left to Ecclesiastical arrangement, which may vary according to the requirements of the time.

But what is fundamental in the whole question is the general principle, and its special applications in Leviticus, together with those few additions contained in the Anglican catalogue. These are natural, eternal law. They are, therefore, immutable, incapable of dispensation. The Church has taught as much persistently for fifteen hundred years. Consequently, the Church of Rome has erred in later times by admitting the lawfulness of dispensation even within this sacred enclosure.

The general principle; and the special prohibitions virtually as well as explicitly contained there, form part of the natural law, and are immutable. The Church has taught this for

fifteen hundred years. The Catholic Church has fallen into error on this point.

The Ecumenical Council of Trent has erred in sanctioning the practice. Popes have contradicted the teaching of their predecessors. Catholic Theologians and Jurists have erred, to a man, from the way of truth, since their separation from Anglican communion. A darkness, like that of Egypt, has fallen on the Catholic schools since the time of that eighteenth general Council.

There is something positively refreshing, amid the proofs of scepticism that surround us, in this remarkable instance of childlike credulity. If it had only selected an object worthy of it, what might it not have done for us in the present distress?

However, this broad, unconditioned statement, that the Church of God for fifteen hundred years had been teaching such doctrine, required sterling proof. For Dr. Pusey knows as well as we do, that there never was an age when the public was less inclined to accept a man's *ipse dixit* than the present. Accordingly we find him expatiating,—he will forgive us if we add, floundering,—amidst Canons of Councils, *dicta* of Popes, quotations from Fathers, conclusions of Schoolmen, happy and confident. The deplorable consequence is that we have all of us,—author and readers,—to plunge into the chaos of an industrious imbroglio. But, before doing so, it would be as well to introduce the Doctor once more, that we may hear, as it were from his own lips, what he purposes to prove. "The object of the writer," he says, ". . . was chiefly to bring before them [the Commissioners] the weight of what was said or implied by Holy Scripture upon this subject, and to show how those Scriptures had been understood by the whole body of the Christian Church, down to the Council of Trent."¹ A little further on, the *virtual* prohibitions are spoken of as, "What up to that time" (*i. e.* the time of the Tridentine Council) "had been, by the deliberate judgment of the Church, century after century, accounted the law of God."²

There is no ambiguity here, at all events. The Doctor has committed himself to the unequivocal statement that *the Church*,

¹ Evidence, &c. Preface, p. iii.

² Ibidem, p. v.

—not, mind, a particular Church, or a provincial synod, but *the Church*,—by a deliberate judgment, repeated in successive centuries, had declared these virtual prohibitions as well as those expressed in Leviticus, to be the law of God ; or, as Dr. Pusey has all along explained his meaning, to form a part of the natural law. It is true, indeed, that he serves himself of the word, *accounted* ; which is an unfortunate exception to the general preciseness of his *dictum*. But, as it would be impossible, without dishonesty, to affirm that a corporate and historic Institution has accounted a certain something to be true, unless it had somehow and somewhere given formal expression to such a judgment, we are doing no violence to Dr. Pusey's words, if we understand him to assert that the Church has for successive centuries up to the Council of Trent, declared these prohibitions, historically Divine, to form part of the natural or eternal law, and to be, therefore, immutable and incapable of dispensation. Now we, on the other hand, affirm, as categorically as good manners will permit, that there is no real foundation whatsoever for this statement, and that the supposed authorities, quoted by Dr. Pusey, do not afford it the slightest support. As the Doctor's historic review is incomplete, we intend, in the progress of our examination, to fill up certain *lacunæ* ; but we shall always sufficiently indicate the witnesses that he has summoned, as we pass them one by one under review.

Our contention is, that the Church has taught no such thing.

Before entering on our inquiry, it behoves us to make one other preliminary observation, which will not only serve to clear the ground before us, but will throw some light on Church history in general. It should never be forgotten that the Church of Jesus Christ consists of a double element. Her spirit is Divine. So is Her end ; so, the means appointed for the attainment of that end. So likewise is Her power and authority. She is, so to speak, Christ living out again on earth the days of His human Mission ;—a continuation of the Incarnation. But in Her outward and visible constitution She is human. Like Her Divine Spouse, She has a double nature. She is composed of men. Men form Her hierarchy, men, Her subjects ; and the Divine plant of Her supernatural Ethics, like Her faith, grows to its perfect development in

Preliminary consideration.

human soil. Her political form, Divinely predestined, was to be elaborated by human agency under the infallible guidance of the Blessed Spirit. Her laws, Her philosophy, Her *science* of Theology, Her moral code, Her rites and ceremonies, even some of Her sacramental forms,—all these, though Divine in their original design, Divine in their continuance and preservation from error, were appointed to be worked out, perfected, through the instrumentality of human operation. To all outward appearance these Divine seeds of truth,—supernatural in their creation, supernatural in their sowing, supernaturally fertilized,—were ordained to develop into flower and fruit, like the natural products of human reason and of human invention, save that the development was guarded, preserved from corruption, by the guidance of a Divine Presence. The Church, then, in the beginning, found Herself, like a child in its cradle, unprovided with all but the Divine Life Which energized within Her. Very shortly afterwards She received, in certain inspired documents written by the first great Princes of Her hierarchy, a deposit of faith and morals, fragmentary and unordered. By oral teaching that Divine deposit was completed, and given to Her keeping. It was God's work; and all God's works are complete. But it was not given in scientific form, and contained much that was implicit. To human agency, under the conditions already described, was committed its harmonious evolution and ecumenical promulgation. Thus,—to confine our attention to Her moral code,—the Evangelical law was written in the hearts of the faithful by the indwelling Spirit. Christ and His Apostles bequeathed to Her certain grand principles of this new law, but left it in charge to Her to apply and particularize these by Her own Divinely-controlled legislation. Of course, now that the matrimonial contract was elevated to the dignity of a Sacrament, the whole question of marriage, and of the impediments to marriage on the score of consanguinity and affinity, would early occupy Her attention, and occupy it more and more, in proportion to the growth of Her political status in the world. Under these circumstances, what more natural than that She should cast Her eye on the Levitical code, not as being in itself a living law obliging Her by a sanction that,

as a fact, no longer existed, but as a model, Divine in its origin, expressing in its way a principle of the natural law, in accordance with whose imperfect outline She might shape Her own laws of marriage! She therefore accepted these judicial precepts of the old law, not because they had any power or right over Her, but because they were a safe and easy guide, a partial indication of the Divine Will.

And now let us return to Dr. Pusey, and commence our promised examination of the evidence which he has brought forward in support of his portentous assertion.

Examination of Dr. Pusey's evidence.

In the course of his examination the Doctor is asked by one of the Commissioners, "When was the earliest period in the Christian Church at which notice was taken of these marriages?"

This question must be understood in relation to Dr. Pusey's previous statements and the nature of the inquiry; otherwise it might appear to bear simply on a matter of Ecclesiastical antiquities. The whole point turned on the nature of these prohibitions, and the authority that imposes them. We ought also to add, in justice to Dr. Pusey, that these two questions were considered particularly in their relation to that other of the marriage with a deceased wife's sister.

To this interrogation the Doctor replies: "In the Apostolic Canons, canon 19, one who had *so* married" (*i. e.* with a deceased wife's sister,) or had married a niece, "was for ever excluded from the clergy."¹

Dr. Pusey's witnesses. The Apostolic Canons.

Let us probe this proof, and see what it is worth. The Canon runs thus:

"He who has taken in wedlock two sisters, or a brother's daughter, cannot be a cleric."²

Now let us once more reduce Dr. Pusey's argument to its formal expression. The Apostolic Canon forbids that any one who has married two sisters or a niece should be admitted to the clerical office. Therefore the Primitive Church declares the marriage between such relatives, and by implication all the other marriages of a like nature prohibited in the Anglican

The argument based on this Canon.

¹ Evidence, &c. n. 444. p. 11.

² "ὁ δὺο ἀδελφὰς ἀγαγόμενος ἢ ἀδελφιδὴν (aliter ἀδελφήν) οὐ δύναται εἶναι κληρικός."—Can. 18. Labb. T. i. p. 29; cf. p. 49. Lutetiae Paris. 1671.

Prayer-book, to be prohibited by the natural law. The major to this syllogism is plain enough.

Answered by
a *reductio ad*
absurdum,
from the
review of
some other
of these
Canons.

But if it be true that whenever the Church declares a given action to be an impediment to the clerical office, She *ipso facto* teaches that such action is forbidden by the natural law, the results will be more serious than the Doctor contemplates. For in the canon immediately preceding that which he has quoted, it is ordained that "If any one shall have married a widow, or one that had been divorced . . . or a maid-servant, or any one on the stage, he cannot be bishop, or priest, or deacon, or generally one of the hierarchical order."¹ If Dr. Pusey's argument, therefore, holds, no man can marry a widow, his servant, or an actress, without violating the natural law, and consequently committing a mortal sin. The nearness of the parallel between the two cases is increased by the fact that, as Dr. Beveridge reminds us,² this prohibition is found in a statute of the Levitical law (Levit. xxi. 13, 14). So, again, the twenty-fifth canon is as follows: "Of those who have been promoted to the order of clergy unmarried, we ordain that those who will to marry should remain Lectors and Cantors only."³ It follows that if a clergyman marries, he violates the natural law and is guilty of mortal sin. The argument proves too much, or nothing at all. But what about the Divine obligation of the Levitical precepts? Are we to trust to the fact, that the two instances mentioned in the canon are included in the Levitical prohibitions? Then the marriage of a clergyman with a widow, or a servant, or an actress, (as each is prohibited in the same code,) must be prohibited by the natural law also.

We proceed, then, with Dr. Pusey's next conciliar authorities. One of the Commissioners asks him, "Will you have the goodness to proceed with your statement of the views held upon this subject in the early Christian Church?"

Dr. Pusey's
further evi-

The question is a definite one. The Commissioner asks the

¹ "ὁ χήραν λαβὼν ἢ ἐκβεβλημένην ἢ ἑταῖραν ἢ οἰκίτην, ἢ τῶν ἐπὶ σκηνῆς, οὐ δύναται εἶναι ἐπίσκοπος ἢ πρεσβύτερος ἢ διάκονος ἢ ὅλως τοῦ καταλόγου τοῦ ἱερατικοῦ."—Can. 17. alit. 8. ibidem, p. 29.

² Vide Cotel. PP. Apostolici, t. i. p. 478. Amstelod. 1724.

³ "τῶν εἰς κλῆρον προελθόντων ἀγάμων, κελεύομεν βουλομένοις γαμεῖν ἀναγνίστας καὶ ψάλλτας μόνους."—Labbe. T. i. p. 29.

witness to *continue*,—for he had already introduced this very unfruitful canon,¹—his statement of the views which the Primitive Church held *on this subject*; *i. e.* upon the marriages prohibited in Leviticus xviii., and in particular, whether the Church prohibited them *because* they were in Scripture, and part of the moral or natural law. Dr. Pusey so understood it at all events; for the heading of one of his pages (pp. 14, 15) is as follows: “The same marriages allowed or not by the early Church as now by the English Church, as being allowed or no by H. Scripture,” and on pp. 18, 19, from which we partly quote, he has this heading, “Degrees limited gradually only. Lev. vi. (xviii. ?) 6, the rule in relaxing limitations.” If they are not quoted for this purpose, but only to show that the Primitive Church prohibited marriages within the same degrees of consanguinity and affinity as the Levitical code, we can only say that there is a great display to little profit. For the fact proves nothing, and no Catholic would care to deny it.

dence.
His inten-
tion ob-
scure; but
determined
by the con-
text, and
nature of
examina-
tion.

However the case may be, we will look at Dr. Pusey’s list, sift the evidence for the sake of our own contention, and make no more reference to the author of the Eirenicon, after a careful examination of the list itself, than is absolutely necessary.

Dr. Pusey’s answer to the above interrogation is as follows: “Then, I think, the earliest mention of those *later* degrees is in the early part of the 6th century, in French Provincial Councils.” (*Will the Doctor tell us, if he can find any earlier mention, in Councils, of the Levitical degrees?* Does he not mean, that he can find no mention of the subject at all, earlier than that date, in Councils?) “The prohibition of the marriage with the wife’s sister is continued, with other laws of Lev. xviii., and *that of first cousin* is added in the Council of Epaune (Epaon. A. D. 517, can. 30); Clermont, i. (Arvern. 1. A. D. 535, can. 12); both are quoted in the 2nd Council of Tours (Turon. ii. A. D. 567, c. 21). Both are again prohibited in the 3rd Council of Orleans (Aur. iii. A. D. 538, c. 10). In the canons of the Councils as extant, *there is mention of the second cousin also* (sobrinamve, sobrinæve).² In the last edition of the Decretals

His list o
Councils,
prove his
point.

¹ Evidence, &c. nn. 445, 446. pp. 11, 12.

² Surely there is some mistake in this supposed quotation; as, however, no reference is given, correction is impossible.

(caus. 35, q. 23, n. 8), where a spurious canon is quoted as of the Council of Agde (Agath. can. 61), it is omitted. The Council of Auxerre (A.D. 578, can. 31) *forbids the marriage also of first cousins, and of those born of them—(second cousins).*

"A small Spanish Council of eight bishops of Toledo (Tol. ii. A. D. 531, can. 5), requires that no one should seek to be united in marriage with any near of kin 'as long as he knows the lineaments of affinity by descent,' *on the ground of Lev. xviii.*, and threatens canonical sentence and excommunication for years (annosioris excommunicationis), in proportion to the nearness of the blood by which he shall have been defiled. But it does not specify any degrees.

"In the Eastern Church, the Council of [in?] Trullo, *acknowledged throughout* (A. D. 694, can. 54), *enlarges the canons of S. Basil, founding them upon Holy Scripture, i.e. Lev. xviii. 6.*"¹

In his preface, Dr. Pusey finds occasion to make certain unjustly severe strictures on the evidence of the Rev. R. C. Jenkins. Among other matters, he animadverts on that gentleman's statement of a "constant succession of these decrees of councils," which he had represented as having been convened in A. D. 305, 314, 370, 517, 538, 578, and so on, at different times near one another. Dr. Pusey remarks: "Apart from this manifest contradictoriness, the fact itself is inadvertently misrepresented. Even in a book, the years 305, 314, 370, 517, 538, 578, hardly look like a 'very constant succession of these Councils;' since between 314—517 (for in A. 370 there was no Council on these matters) there is a gap of 200 years. But what, when in history the Council of A. 305 is in *Spain* (Eliberis), that of A. 314 in Asia (Neo-Cæsarea), (in A. 370 S. Basil only drew up penitential canons, allotting the terms of penitence for various sins) that of A. 517 was in *France*?"² Within six lines, unpleasingly filled, Dr. Pusey continues by simply repeating the assertion of the brother clergyman which he has so sharply contradicted. He writes, "In one part of the Church (the French) we do find at the close of this period, not these only, but other incestuous marriages also, again and again forbidden. . . . We need not be surprised at the

¹ Evidence, &c. n. 460. pp. 17, 18. The italics are our own.

² Ibid. Preface p. xlii.

...a marriage with Joanna, the
 so that, on the strength of suc
 claim to the crown of that kingd
 A.D. 1475 he marched there with
 at Placencia by the Duke of Vil
 As Alphonso was Joanna's uncle
 for a dispensation, which was gr
 same year they were married.

Shortly after, however, the Pope
 celling the dispensation which he h
 that it had been obtained by a r
 and the princess was relegated to
 Ferdinand and Isabel retained posse
 fact belonged to the latter, not only
 consent, but by clearest right of leg

This dispensation for marriage b
 important in itself; but it is sp
 English, by reason of its intimate c
 mother of Katharine, Henry VIII.'s

XX. We have at length reached, in
 the Pontificate of Alexander VI., the
 have no intention of constituting o
 Rodriguez Lenzuoli : for we

XX. Dispen-
 sations
 granted by
 Alexan-
 der VI.
 Doubts sug-
 gested as to
 the truth of
 the charges

but tells
against it.

would, consequently, be living in simple concubinage. Moreover, the canon is so drawn up as to exclude the case of such a marriage with the sister, if an unbeliever. This sufficiently shows that it is a positive law connected with Ecclesiastical discipline; for if it had touched upon the natural law, which is of *universal* obligation, the exceptional clause would have been nugatory and inexplicable.

Dr. Pusey
constructs
an argument
on the
severity of
penance im-
posed on him
who marries
a deceased
wife's sister.

However, Dr. Pusey has an argument to sustain his point, which, such as it is, we will set before the reader. He writes thus in reference to this canon:—It “annexes the same penalty to this marriage as to an aggravated case of repeated fornication, or of once falling into adultery,—to be kept from communion for five years;—whereas that sinful anticipation of marriage so justly complained of among our poor, it punishes with one year only, and without public penance.”¹

Now here is a striking instance of what has been said in our prefatory remarks at the beginning of this chapter. It is simply impossible for those who are outside the Catholic Church to form any just notion of Her discipline; and when they attempt it, they are all abroad. It is a living, consistent whole; but affected by circumstances so various, and changing with change of place and time in a way so unexpected, that *à priori* reasoning about it is sure to be wrong. Take the present instance. Dr. Pusey's inference would seem at first sight a very fair one, as he puts it. Protestants would probably think it conclusive, till it is examined by the aid of Catholic knowledge and experience; then it melts into thin air.

The argument is this in effect. The marriage in question must have been regarded by the Fathers at Eliberis as a very grievous sin; for the penance imposed is as severe as that prescribed for adultery and other heinous crimes. Well; let us examine some other canons of this Council, in order to test the justness of the inference.

This argu-
ment ex-
amined, and
refuted by
reference to
other Canons
of the same
Council.

In the fifth canon it is decreed that if a mistress should have beaten her slave so cruelly that the latter dies within three days, should the mistress have willed so to do, she was to be excommunicate for seven,—if the death was *accidental*,

¹ Evidence, Preface, p. xlvii.

for five years. If one of the faithful, says the seventh canon, should have committed fornication (post lapsum *mæchiæ*¹), and, after having completed his penance, should again fall into the same sin (*denuo fuerit fornicatus*), it has seemed good that he should not be admitted to communion, even at his death. In the twelfth canon, if any woman among the faithful shall have practised *lenocinium*, she is to remain excommunicate even at the hour of death. In the sixteenth, if a parent has given his daughter in marriage to an infidel or a heretic, he is excommunicate for five years. In the sixty-sixth, "a man who has married his step-daughter is to remain excommunicate even at the hour of death; because he is an incestuous person." We invite the reader's attention to the difference of the penance and of the wording in this case, as compared with the canon on which Dr. Pusey has built his proof. If a man should have committed adultery once only, the sixty-ninth canon enjoins a penance of five years. If a woman should have committed the same sin with the knowledge of her husband, she was, according to the seventieth canon, to remain excommunicate for ever; if the husband had previously deserted her, for ten years. In the seventy-third canon it is prescribed that, "If any of the faithful should have turned informer, and by his information any one should have been proscribed or executed, it has seemed good that he should be excommunicate even at the time of death. If the cause were of less weight, he could receive communion within five years." In the seventy-fourth canon it is decreed that if a man has borne false witness, in a matter which was not a mortal sin, and should have confessed his fault, he is to be excommunicate for two years; if he should have failed to confess it before the assembly of clerics (*si autem non (ex-)probaverit conventui clericorum*) for *five* years. "If a deacon," says the seventy-sixth canon, "should have allowed himself to be ordained, and afterwards it should be found out that he was charged with a capital offence (*in crimine mortis*), if he should confess it of his own accord, it has seemed good that he

¹ It is plain that *mæchia* is used in this its more generic signification. The subsequent clause so determines it; and Gabriel Albaspineus, Bishop of Orleans, so explains it in his notes on the Council.—See Labbe, T. i. p. 990.

spend more time over a celebrated dispensation of this Pope, not only because of its intimate connection with the history of our own country and with the real motive causes of the English 'Reformation,' but also, more particularly, for the reason that it incidentally gives us a clear insight into the development of Theological opinion in the Schools, touching those much debated and cognate questions of the prohibited degrees and of the Papal power of dispensation in their regard.

granted by
Julius II.
Henry VI
for marriage
with his
deceased
brother's
wife.

Henry VII. of England had made diplomatic arrangements for a marriage between his son Arthur, heir to his crown, and Katharine, daughter of Ferdinand and Isabel. The articles were agreed upon by both kingdoms; and, on the 14th of November, 1501, the union of the two was duly solemnized. Arthur had at this time just attained his fifteenth year, having been born September 20th, 1486; and his physical weakness gave already gloomy prognostic of what was so soon to follow. Katharine was about ten months older than her young husband. On the 2nd of April in the ensuing year, the young prince, who was then residing at Ludlow Castle as Viceroy of Wales, yielded up his soul to God. Henry, now heir to the throne, was just entering on his eleventh year when his brother died; for he was born at Greenwich on June 28th, A.D. 1491.

History of
the trans-
action.

Immediate steps were taken by the Court of Spain to negotiate a fresh alliance between the new Prince of Wales and the young widow; and its efforts were so far successful as to obtain from England an agreement that, provided the necessary dispensation could be obtained from Rome, there should be at once a precontract of marriage; which should be finally solemnized as soon as Prince Henry had reached his fourteenth year. We have it on the authority of Mr. Blunt, that there was much discussion among the ecclesiastics in England touching the Pope's power to grant the dispensation; but it was decided in the end, (fortunately, we suppose, for the Pope), that he could.¹

Miss Strickland tells us that Katharine was betrothed to Henry "on the 25th of June, 1503, at the house of the

¹ Reformation of the Church of England, p. 103. Rivingtons, 1869.

a heavy censure; and it is used as a bridle on certain sins, which happen to be prevalent in that particular locality. Often they are in themselves comparatively light sins; sometimes not sins at all, but dangerous occasions of sin. Thus, we have heard of a particular class of dances being prohibited, under pain of reservation; as, in like manner, the entering into a public-house or whiskey-shop on a Sunday. Such facts suffice to illustrate the fact, that the nature or gravity of the offence is not a safe measure of the Church's censures; and that these are, *to say the least*, as much remedial, as they are vindictive.

To resume, however: The sixty-first canon of the Council of Eliberis affords not one syllable of evidence in favour of Dr. Pusey's thesis. That an Ecclesiastical penance is imposed upon such as marry a deceased wife's sister, shows indeed that there has been a violation of the Church's law. But whether that law is only positive or whether, on the other hand, it forms part of the natural law, we have not the slightest ground for determining.

The evidence of this second witness fails.

ii.* The next Council, treating on this subject, is that of Neo-Cæsarea, A. D. 314. The second canon is as follows: "If a woman marry two brothers, let her be excommunicate up to the hour of her death. But, at death, out of mercy, if she have given a promise that, in case of her restoration to health, she will dissolve the marriage, she shall be absolved. But if the woman or the husband shall die in a marriage of this sort, reconciliation shall with great difficulty be granted to the survivor."¹

ii. The Council of Neo-Cæsarea.

There is no doubt that this penalty was a very severe one. No legitimate argument can, however, be drawn from the fact, (which Dr. Pusey introduces with somewhat too much art,*) that Dionysius Exiguus has in his Latin version given this heading to the canon in the summary or index, "Of those who have married two brothers, or who have taken two sisters to wife." At the most, it gives us a clue to the private

Proves nothing in favour of the thesis.

¹ "Γυνή ἰδὼν γήμῃται δύο ἀδελφοῖς, ἐξωθείσθω μέχρι θανάτου· πλὴν ἐν θανάτῳ, διὰ τὴν φιλανθρωπίαν, εἰποῦσα ὡς ὑγιανάσα λύσει τὸν γάμον, ἔξει τὴν μετάνοιαν. Ἐὰν δὲ τελευτήσῃ ἡ γυνὴ ἐν τοιοῦτῳ γάμῳ οὖσα, ἦτοι ὁ ἀνὴρ, δυσχερὲς τῷ μείναντι ἡ μετάνοια."—Labbe. T. i. p. 1481.

² Evidence, &c. Preface, p. xlvii.

judgment of the translator; though the question is one of comparatively little practical importance, since we are far from denying that the marriage in question was forbidden by Ecclesiastical law, and the severity of the censure gives no index of the nature of the fault. One thing is certain. There is here no allusion to the Levitical law; nothing to help us in determining whether such marriage, according to the mind of these Eastern Bishops, was prohibited by the natural, or by positive law.

i. Council
f Valence.

iii. The next witness producible on this subject is a French Council held at Valence, A. D. 374. Its first canon runs as follows: "It has seemed good therefore that no one, after the time of this synod, (which, not before it was wanted, provides a remedy for such unlawful proceedings,) can be ordained as a cleric, who has been married twice, or is the husband of persons related by intermarriage. Nor need the inquiry be made, whether they have polluted themselves with this necessity of an unhappy lot, after having been admitted to the Divine Sacraments, or as Pagans; since the form of the Divine precept is chaste" (probably referring to Titus i. 6, and 1 Tim. iii. 2; as we find in other cases where men, who have married more than once, are excluded from the sacred ministry). "But, forasmuch as we cannot condemn, whether it be the inexperience, or simplicity, or even presumption of our brethren, nor correct in all the Churches what has now of long time been wrongly done, it has seemed good that there should be no further inquisition into the *status* of those who have been already ordained, if there should appear to be no reason over and above this, which may show that they are unworthy of their office."¹

We remark on this canon:

¹ "Sedit (placuit) igitur, neminem post hanc synodum, qua ejusmodi illicitis vel sero occurritur, de digamis, aut inter nuptiarum maritis, ordinari clericum posse. Nec requirendum, utrumne initiati sacramentis divinis, anne gentiles, hac se infelicis sortis necessitate maculaverint, cum divini præcepti casta sit forma. Sed quia fratrum nostrorum vel imperitiam, vel simplicitatem, vel etiam præsumptionem damnare non possumus, nec per omnes Ecclesias quæ sunt jam pridem male gesta corrigere; placuit etiam de eorum statu qui prius ordinati sunt, nihil revolvi, si nulla extrinseca causa procedat, qua indigni ministerio comprobentur."—Labbe. T. ii. p. 905.

a. Cases of intermarriage are joined with those of persons who have been married more than once, as scandals which exclude those included in either class from the hierarchical order. It is very common to find, in the canons of early Councils, this censure of irregularity pronounced against those who had been married more than once. Will Dr. Pusey tell us that such marriage is, in the judgment of the Church for fifteen hundred years, a violation of the natural law?

Remarks
the Canon
cited.

b. This act of digamy is described as a moral stain, an unhappy lot, an illicit act, in the canon itself.

c. The Apostle's precept is called *Divine*. Will Dr. Pusey venture to say that the Church can never dispense from its observance, or repeal it? If so, he will have a strange account to settle with the Communion of which he is a minister.

The evide
retorted.

d. It is a canon which only affects clerics.

iv. We now proceed to quote from a Codex of Canons, sent to the Bishops of France by a Roman Synod, in answer to certain questions which had been sent for solution by them, very much according to the present custom, to the Roman Church. These canons were first published by Father Sirmond.¹ Their date is uncertain; but intrinsic evidence has induced both Sirmond and Labbe to refer them to the Pontificate of S. Innocent I., who succeeded S. Anastasius I. in A. D. 402, and sat on the chair of Peter for about fifteen years. Nobody, says Labbe, can fail to perceive their great antiquity.

iv. Roman
Codex of
Canons for
France.

In the ninth canon we read: "As regards him who has taken in marriage the sister of his deceased wife. In the law of the Old Testament it is written, that it behoves a man to take in marriage his brother's wife, in order to raise up seed to his deceased brother, provided, however, that he has left no

¹ "Father Sirmond was one of the most learned men of whom France can boast." He became a Jesuit. In 1590 he was made Secretary to Father Aquaviva, then General of the Society. Arrived at Rome, Cardinal Baronius gained him an entrance into the Vatican library. He returned to Paris in A.D. 1608; and began to publish the result of his labours. Pope Urban VII. wished to recall him to Rome, but he was detained by Louis XIII., who chose him to be his confessor. He died in Paris, A.D. 1651.—*Biographie Universelle*, T. xlii. p. 427.

children of his own. . . . Nevertheless, because generation was reckoned through the husband, the commandment of the law enjoined that this should be done by a man. But it is nowhere read of the woman; but perhaps it has been presumed. For the law says [does the law say?] Cursed is he that knows carnally the sister of his wife. Had not Jacob two sisters at one and the same time, by reason of a mystery, and concubines? And were not all who were born (of him) named Patriarchs? It is now no longer permitted to Christians to have such. Had they (in the Old Testament, that is) more wives than one and concubines? But now the [New?] Testament does not allow this to be done; for in it purity is more fully expanded; and chastity is praised in the teaching of Christ, where He says, 'All cannot understand the word of God, save those to whom it is given.'"¹

to evidence
against the
thesis.

In this response of the Roman Conclave, we perceive a distinction drawn between the old law of Moses and the new law of Christ. If we do nothing more than ignore the evidently corrupt sentence in the middle of the answer, it is still plain that the Roman Prelates argue as though the marriage with a deceased wife's sister were permitted in the old Dispensation, but forbidden in the Church of Christ. The reason is likewise given for the change. For, under the Gospel, purity

¹ "De eo qui sororem uxoris suæ duxerit uxorem. In lege veteris Testamenti, scriptum est, ad suscitandum semen defuncti fratris oportere ducere uxorem, ita tamen si liberos ex eodem minime reliquisset . . . Tamen propter virilem generationem legis constitutio imperabat hoc fieri a viro; de forminis nunquam est lectum, sed forte præsumptum. Nam lex dicit: Maledictus qui cum uxoris suæ sorore dormierit. Numquid duas habuit uxores Jacob uno in tempore sorores, causa mysterii, et concubinas, et omnes qui nati sunt, patriarchæ sunt appellati? Nunc jam Christianis habere non permittitur. Numquid uxores et concubinas habuerunt? Sed nunc hoc non patitur fieri testamentum, ubi amplius de integritate tractatur; et castitas, Christo docente, laudatur, cum dicit, Non omnes capiunt verbum Dei, sed quibus datur."—Labbe. ii. p. 1320.

Sirmond remarks generally of these canons, "Sunt et alia in his canonibus non pauca, quæ emendationum codicum opem desiderant." It seems clear to us that in the supposed quotation from the Law, the *nam* should be *num*, or *non*. For, first of all, there is no such anathema in the Levitical law; and then the *nam* agrees with neither the preceding nor following context. We also conjecture that in the first clause of the last sentence, the *nunc*, owing to the eye of the transcriber having been caught by the previous *nunc*, has been substituted for *notum*.

and chastity have been raised to a far more excellent dignity.

Surely, then, this canon cannot help us towards the conclusion that the marriage in question is made void by the eternal and unchanging law of God, or that the Church has pronounced the prohibitory precepts in Leviticus to be perpetually binding on Christians, or that She has forbidden marriage with a deceased wife's sister under the compulsion of a promulgation from Mount Sinai.

v. We add to the authorities already produced that of the fourth canon, taken from the Commonitorium of Theophilus, Patriarch of Alexandria, who,—as the introductory Greek heading informs us,—was present among the hundred and fifty Fathers, assembled at the first Council of Constantinople in A.D. 381. The following are the words of the African Patriarch: "About Panuph, who was appointed deacon in Lyco, inquiry must be made. And if it should be found that he took in marriage his niece, when he was a catechumen, and that after baptism he was raised to the clerical state, let him remain among the clergy; that is, if she is dead, and he has not had connection with her since his baptism. But if when he was already one of the faithful, he received this same niece of his into the union of marriage, let him be removed from the clergy. For there is no cause of accusation against Apollo the Bishop, if he ordained him through ignorance."¹

v. Commonitorium of Theophilus, Patriarch of Alexandria.

In this canonical reply of the Patriarch of Alexandria, there is manifestly a distinction made between the Ecclesiastical consequences of marriage with a niece before and after the baptism of the husband. In the former case no penance or censure is imposed, though the uncle in question was a deacon; having been afterwards ordained by the Bishop of Lyco, who was ignorant, as it would appear, of the marriage within the prohibited degrees. If, however, the marriage took

Decision concerning marriage of a deacon with his niece before his ordination,

¹ "Περὶ Πανοῦφ τοῦ καταστάντος διακόνου ἐν τῇ Λυκῇ, δεῖ ζητῆσαι· καὶ εἰ μὲν εὐρεθῇ οὗτος κατηχούμενος τυγχάνων, τὴν ἀδελφιδὴν ἑαυτοῦ πρὸς γάμον δεξάμενος, μετὰ δὲ τὸ βάπτισμα εἰς κληρὸν ἐνεχθεὶς· μενέτω ἐν τῷ κλήρῳ· εἴγε κεκοιμηται ἡ κεῖνη, καὶ μετὰ τὸ βάπτισμα οὐκ ἐκοινώνησεν αὐτῇ· εἰ δὲ πιστὸς τυγχάνων, τὴν αὐτὴν ἀδελφιδὴν ἑαυτοῦ πρὸς γάμον κοινωνίαν ἐδίδεκε· ἴστω τοῦ κληροῦ ἀλλότριος. οὐ γὰρ πρόκριμα τῷ ἐπισκόπῳ Ἀπόλλωνι, εἰ ἐξ ἀγνοίας κατίστησεν αὐτόν."—Labbe. T. ii. p. 1800.

place after the uncle's baptism, he was sentenced by the Patriarch to perpetual exclusion from the clerical body.

Proves these prohibitions to be only Ecclesiastical.

Now, whence this difference? Is it not plain that while yet a catechumen and not united to the mystical Body of Christ, he was not wholly subject to Ecclesiastical law; whereas, once baptized, he was *ipso facto* under subjection to its precepts? But let us suppose that Theophilus had considered this marriage between Panuph and his niece as a breach of the natural law, could he have for one moment allowed of such a distinction? What would it have mattered, whether the deacon had been only a catechumen, if he had sinned against that eternal law which is of universal obligation? Would he have permitted him to continue his clerical functions? In either case, would there have been no excommunication for a certain term of years? It is further to be borne in mind that there is nothing about Leviticus, or the perpetual obligation of its precepts.

vi. Irish Council under S. Patrick.

vi. We now insert, somewhat out of the chronological order, two canons which were promulgated by an Irish Council under the presidency of S. Patrick. This great Apostle was born A.D. 372, and died about A.D. 483. It must not be forgotten that he had been at Rome; in fact he was sent by the Pope, when he set out for Ireland the second time. Whether these canons were his own, or the work of his nephew, or of some one of his successors, appears uncertain. They are, at all events, of great antiquity.

The twenty-fifth canon is to this effect: "Hear the decrees of the Synod concerning those matters. Let not a brother go up to the bed of his deceased brother, since the Lord says, *They two shall be one flesh*. Therefore the wife of thy brother is thy sister."¹

The twenty-ninth treats "of consanguinity in marriage"; (*de consanguinitate in conjugio*). It thus stands: "Understand what the law speaks, neither more nor less: but that which is observed by us, that four kinds should be divided off, they say that they have neither seen, nor heard."²

¹ "Audi decreta synodi super istis: Frater torum defuncti fratris non ascendat, Domino dicente: *Erunt duo in carne una*; ergo uxor fratris tui soror tua est."

² "Intelligite quod lex loquitur non minus nec plus: quod autem observa-

In the first canon the prohibition of marriage with a deceased brother's wife,—*i. e.* in the first degree of affinity in the collateral line,—is founded on a principle of the Evangelical law, as declared by Christ. The second canon is hopelessly obscure. One thing seems plain, that the prohibition of marriage was extended, at that time, by the common Ecclesiastical law, to the fourth degree of consanguinity. Again, no mention of Leviticus; no reproduction of its catalogue of prohibitions.

Goes against the thesis.

vii.* The first Council of Orleans, held in A.D. 511, in its eighteenth canon makes the following decree: "Let not a surviving brother go up to the bed of his dead brother; and let no one venture to unite himself to the sister of his deceased wife. If they should have done so, let them be punished with Ecclesiastical severity."¹

vii. The first Council of Orleans.

There is nothing here again to indicate that such marriages are a violation of the natural law. There is nothing about the Levitical law;—no introduction of the Levitical catalogue. They have committed an Ecclesiastical offence; they are to be punished with Ecclesiastical severity.

Proves nothing.

viii.* The Council of Yenne or of Epaone, in Burgundy, held in A.D. 517, affords us, in its thirty-first canon, a more extensive list of prohibited degrees. The following is a literal translation. "As regards incestuous unions we reserve no pardon at all, save when they have, by a separation, removed the disease of adultery. And we consider as incestuous persons, who are not to be considered as in any way married, (besides those whom it is sad even to name,) the following. If any one should by carnal connection have polluted the widow of his brother, who before had been almost a sister. If any brother should have married his wife's sister; if any one should have married a step-mother; *if any one should have united himself to a first cousin*; if any one should have had connection with the wife or daughter of an uncle on the

viii. The Council of Yenne, or Epaone.

tar apud nos, ut quatuor genera dividantur, nec vidisse dicunt nec legisse."—Labbe. T. iii. pp. 1482, 1483.

¹ "Ne superstes frater torum defuncti fratris ascendat, neve se quisquam amissæ uxoris sorori audeat sociare. Quod si fecerint, Ecclesiastica destructione feriantur."—Labbe. T. iv. p. 1407.

mother's side, or the daughter of an uncle on the father's side, or with a daughter-in-law; or who should have polluted by concubinage, or taken to wife, any one related to him by consanguinity or affinity. All these we undoubtedly adjudge to be incestuous, as well formerly, as under this present constitution; and we enjoin that they remain among the catechumens, and pray, till they have made satisfaction according to the law. And we prohibit them at this present time in such sort, that we do not dissolve those which have been contracted up till now. Assuredly, those who are forbidden illicit connection will be free to enter upon a better sort of marriage."¹

Proves
nothing.

This canon has, with others of the same Council, been afterwards subjoined to the canons of the Council of Agde, which was held in A.D. 506.² There is nothing, either in the wording or in the contents of this decree, to justify in the slightest degree Dr. Pusey's assertion; but not a little that tends to disprove it. There is no reference to the Mosaic code. The nature of the final constitutions clearly indicates that it is a question of merely Ecclesiastical law; and the marriage of cousins german and of first cousins is prohibited, — a prohibition which finds no place in the Levitical catalogue.

ix. The
second
Council of
Toledo.
It quotes the

ix.* In the year 531 was held the second Council of Toledo. In its fifth and last canon it forbids marriages of consanguinity under pain of Ecclesiastical penalties increasing in severity

¹ "Incestis conjunctionibus nihil prorsus veniæ reservamus, nisi cum adulterium separatione sanaverint. Incestos vero, nec ullo conjugii nomine prævelandos, præter illos quos vel nominare funestum est, hos esse censemus. Si quis relictam fratris, quæ pene prius soror extiterat, carnali conjunctione violaverit; si quis frater germanam uxoris suæ accipiat; si quis novercam duxerit, si quis consobrinæ, sobrinæve se societ; quod ut a præsentis tempore prohibemus, ita ea quæ sunt antè instituta non solvimus. Si quis relictæ avunculi misceatur, aut patrui, vel privignæ concubitu polluat. Sane quibus conjunctio illicita interdicitur, habebunt ineundi melioris conjugii libertatem."—*Concil. Epæonense*, Can. 30; Labb. T. iv. p. 1579.

² But the words of the Council of Yenne have been changed in the canon as subjoined to those of the Council of Agde. For we find there, according to Gratian, instead of the words, "Si quis frater germanam suæ uxoris accipiat," "Si quis frater germanam uxorem acceperit,"—*if any brother has taken his sister in marriage*."—Can. de incestis, 8, caus. 35, quæst. 3. This latter reading seems the more probable of the two, because it explains the introduction of the word, *frater*.

according to nearness of degree. But it does not specify any degrees, as Dr. Pusey remarks. It however quotes Levit. xviii. 6, as embodying the general principle of its constitution. Nor can this be construed into a recognition of the Levitical law as an authority still binding upon Christians. For the sixth verse is a preamble of the Jewish precepts, limited, in its practical bearings on the obedience of the chosen people, by the subsequent prohibitions, but embodying that which is undoubtedly a principle of the natural law. And in this way Catholic Councils justly quote it, as the Divine expression of a precept imprinted in the universal conscience of mankind.

general prohibition in Leviticus; but not for its Sinaitic sanction.

x.* It is not necessary to do more than simply refer to the second Council of Orleans, held in A.D. 533, at the instance of the two Merovingian kings, Childebert and Clotaire. For it only prohibits one particular kind of incestuous marriage, which it was probably necessary to brand with special reprobation, either on account of the prevalence of such marriages, or by reason, perhaps, of some notorious scandal in high places. Its tenth canon, then, ordains that "no one may be united by any carnal intercourse with his step-mother; i. e. the wife of his father. If any one should have presumed to do so, let him know that he is to be punished with sentence of excommunication."¹

x. The second Council of Orleans concerned with a special case;—proves nothing.

xi.* About two years after this Council, another was convened at Clermont in Auvergne, on the 23rd of June, A.D. 535, by ordinance of Childebert and his royal brothers. This French Synod treats expressly of the prohibited degrees in its twelfth canon, which we set before the reader:

xi. Council of Clermont.

"If any one should have thought fit to violate with union of carnal intercourse his brother's widow, his wife's sister, his step-daughter, *first or second cousin*, or, the widow of his uncle on the father or mother's side, and with sacrilegious daring should have broken through the authority of the Divine law and the rights of nature and,—enemy of his own relatives, and destroyer of modesty,—should have tried to force her (*vim inferre*), to whom he ought to have offered the solace of

¹ "Nullus novercæ suæ, i. e. uxoris patris sui, ulla copulatione jungatur. Quod si quis præsumpserit, noverit se anathematis supplicio feriendum." —Labb. T. iv. p. 1781.

charity and of pious affection, let him be punished by sentence of Apostolic institution; and so long as he is involved in so great a crime, he shall be deprived of Christian society and intercourse, and at the same time of the communion of Mother Church.”¹

At first sight seems to favour Dr. Pusey's contention.

Here we have a canon, at last, of a French provincial Council that seems at first sight to favour Dr. Pusey's assertion. For marriages within certain degrees of consanguinity and affinity are declared to be a violation “of the authority of the Divine law and the rights of nature.”

Considerable difficulties in the way of such an interpretation.

Certain grave difficulties, however, stand in the way of any such interpretation, on a closer examination of the canon in question. For, in the first place, it is not at all clear that the expressions quoted do not refer to the acts of criminal violence, alluded to in the subsequent clause. Then, as the Fathers of this Council conjoin the Divine law with the rights of nature, it might fairly be inferred that, in their judgment, whatever was forbidden by the Divine law in the new dispensation of grace was also forbidden by the natural law, *i. e.* that to a certain extent the natural law was the measure, for us, of the Divine. But we do not imagine this to have been the mind of the Bishops; for it supposes that by *rights* of nature the Bishops meant the *natural law*; whereas the expressions are perfectly distinct. For natural rights include much more than the bare natural law within their circumference, and extend to those actions which,—as regards the present matter,—involve a moral decency and fitness, as we shall presently see, that are over and above the bare exigency of the law.

But another, and still more serious difficulty intervenes to hinder us from admitting that only interpretation which would benefit Dr. Pusey's cause. For we are led to ask what that Divine law is, whose authority is declared by the French

¹ “Si quis relictam fratris, sororem uxoris, privignam, consobrinam sobri-namve, vel relictam patrui atque avunculi, carnalis contagii crediderit consortio violandam; et ausu sacrilego auctoritatem Divinæ legis ac jura naturæ perruperit, et cui caritatis ac pii affectus solatia exhibere debuerat, suorum hostis ac pudicitia expugnator, vim inferre tentaverit, Apostolicæ constitutionis sententia feriat; et quamdiu in tanto versatur scelere, a Christiano cœtu atque convivio, simulque Ecclesiæ matris communione privabitur.”—Labbe. T. iv. p. 1805.

bishops to have been violated, in consequence of the marriages specified in the canon. Now, taking Dr. Pusey for our guide, it cannot be the Levitical law to which the Fathers refer. For in the list of incestuous marriages thus characterized, we find those of first and second cousins specified. But these are certainly not mentioned by name in the Levitical catalogue; and Dr. Pusey is our authority for asserting that they are not *virtually* included. Therefore in no sense whatsoever can they be said to belong to Leviticus xviii. If, then, the expression refers to this list of incestuous marriages at all, we must revert to the explanation of the phrase given in our introductory chapters, and interpret it to refer to canon law.

However, we may probably obtain a clearer insight into the meaning of the phrase, by taking a glance at the contemporaneous history, in accordance with a well-known law of hermeneutics.

The meaning of the Council illustrate by contemporaneous history.

The Merovingian kings, who reigned about this period over the nation of the Franks, were anything but an honour to the Catholic faith, which they had professed since the conversion of Clovis to the faith, towards the close of the century that preceded the convening of this Council; for Clovis was received into the Church on Christmas-day, A.D. 496. He had died A.D. 511, and his kingdom was, as the reader doubtless knows, divided among his sons. Theuderic became king of Metz, Clotaire of Soissons, Childebert of Paris, Clodomir of Orleans. In the year 524 (eleven years before the Council was summoned at Clermont,) Clodomir was slain in battle, and his brother Clotaire, king of Soissons, *took his widow, and forced her to become one of his concubines.* He was a man of unbridled passions; and it is recorded of him, that he kept two sisters at one and the same time in his train of mistresses. For these and similar shameless excesses he was more than once excommunicated by S. Nicetius, Bishop of Treves. Rohrbacher asserts it was against these acts of regal licentiousness that the canon in question was directed.¹

Furthermore, the year before the Council met, Theuderic of Metz had died; and his son, Theodebert, had no sooner succeeded him on the throne, than he signalized his succession by an act worthy of his uncle. For he took to wife a mar-

¹ Histoire de l'Église, L. xliv. T. 9. p. 140. Paris, 1857.

ried woman, Deutérie; though he had already been solemnly espoused to another.

The canon, therefore, seems to have been directed against these revolting acts of incestuous adultery mingled with violence, rather than against incestuous marriages in general, as such. And the wording of the canon confirms the supposition; for it never makes use of the word, *conjugium*, but speaks of *carnalis contagii consortium*, and adds the remarkable phrase, *vim inferre tentaverit suorum hostis*, which evidently implies either physical, or at least moral compulsion. The energy of tone, unusual in conciliar decrees, strengthens the idea, that the Bishops were referring to great scandals then occurring in quarters where they would attract more public attention, and consequently do more serious and more widespread mischief.

If such were the meaning of the assembled Fathers, we can well understand how such crimes should be described as a violation of the Divine law and of natural rights; but then the canon loses all its force,—if it had any before, which we most emphatically deny,—as affording any confirmation of Dr. Pusey's bold assertion.

xii.* 'The third Council of Orleans in A.D. 538, supplies us with a fresh canon on this subject. It is the tenth, and runs thus: "Although the statutes concerning incestuous marriages must be observed; yet we have deemed it fitting, by reason of the newness of their conversion and faith, that indulgence should be shown to those who have just presented themselves for baptism, or who had not been made previously acquainted with the decrees of the Fathers by the teaching of the priesthood; so that marriages of this kind, contracted up to the present time need not be dissolved. But, for the future, let what has been forbidden in the matter of incestuous marriages in former canons be observed; *i. e.* that no one under pretence of marriage presume to unite himself to his father's widow, his wife's daughter, his brother's widow, his wife's sister, a first or second cousin, the widow of his uncle on the father or mother's side. And, if any one should have been united in what is rather adulterous incest than a true marriage, so long as they shall not have separated, let them

, true
suing of
Canon
is not
p the
ctor's
sis.

The
rd
ncil of
cans.

be excluded from Ecclesiastical communion. We have thought it fitting to add, moreover, that it is the Bishop's duty to investigate, with regard to those who are living in his town and territory and have been united within such degrees, whether they have contracted these unlawful marriages in ignorance, or whether they have presumptuously done what was forbidden out of contumacy. For as help is afforded to such as have fallen through ignorance, so, as regards those who knew beforehand the decrees of the Fathers, and are involved in such concubinage, contrary to the prohibitions of the priesthood, the decrees of former canons are in all things to be observed, in such wise that the incestuous persons are not to be re-admitted to communion till, as it has been decreed, they have atoned for the adultery by separation. For in the Law of the Lord it is clearly read, *Cursed is he that lieth with his father's wife, with his step-daughter, or with his wife's sister, and the rest similar to these.* Hence it is that those whom God has cursed, we cannot bless till they have amended."¹

In this canon, again, we have an allusion, though somewhat indefinite, to the old Law;—not indeed, be it remarked, to Levit. xviii., where, as Dr. Pusey teaches, the Divine law is

Allusion
the old
but not
Leviticu
xviii.

¹ "De incestis conjunctionibus ita quæ sunt statuta servantur, ut his qui aut modo ad baptismum veniunt, aut quibus patrum statuta sacerdotali prædicatione in notitiam antea non venerunt, ita pro novitate conversionis ac fidei suæ credidimus consulendum, ut contracta hucusque hujusmodi conjugia non solvantur, sed in futurum quod de incestis conjunctionibus in anterioribus canonibus interdictum est, observetur; id est, ut ne quis sibi sub conjugii nomine sociare præsumat relictam patris, filiam uxoris, relictam fratris, sororem uxoris, consobrinam aut sobrinam, relictam avunculi vel patrui. Quod si qui in hoc incesti adulterio potius quam conjugio fuerint sociati, quamdiu se non sequestraverint, a communione ecclesiastica repellantur. Illud etiam adjiciendum esse credidimus, ut in episcopi discussione consistat, de his qui in civitate sua ac territorio consistunt, et tali sunt ordine sociati, utrum ignoranter ad illicita conjugia venerint, an per contumaciam quæ sunt interdicta præsumpserint; quia sicut his qui per ignorantiam lapsi sunt subvenitur, ita illis quibus prius patrum statuta in notitiam venerunt, quique etiam contra sacerdotum interdicta in tali permixtione versantur, priorum canonum in omnibus statuta servantur, ut non prius ad communionem recipiantur, quam incesti adulterium, sicut scriptum est, (Conc. Epaon. c. 30), separatione sanaverint; quia in lege Domini manifeste legitur; *Maledictus qui dormit cum uxore patris sui, cum privigna, vel uxoris suæ sorore*, et reliqua his similia. Quo fit ut quos Deus maledixit, nos nisi emendatos benedicere non possimus."—*Conc. Aureliensis. iii. can. 10. Labb. T. v. p. 298.*

given on this subject,—but to Deuteronomy xxvii., where certain incestuous connections are denounced with a solemn curse. It is further noteworthy, that the Bishops have added selections of their own to the inspired text. For, in the chapter referred to, the only cases anathematized are connection with a stepmother, a step-sister, or mother-in-law. The Council substitutes for the last a wife's sister, and extends the meaning of the curse to other similar marriages forbidden by Ecclesiastical law, and enumerated already at the commencement.

Canon
ance
at the
s.

It is evident, therefore, that the so-called quotation is merely allusive, not introduced as of authority. If it were otherwise, it would prove too much for those whose interest it is so to understand it; since, whatever the force of the quotation, it must be applied to first and second cousins equally with the rest. Moreover, if, according to Dr. Pusey's contention, the Bishops of this Council understood these prohibitions to be not only Ecclesiastical, but of present Divine authority, how could they possibly sanction these marriages, even if they had been contracted in ignorance of the Ecclesiastical canons on the subject? For nothing is more sure than that the Church cannot give dispensation from observance of a Divine law under any pretext, unless God has given to Her the express permission. The meaning of the Bishops is plain. They declare that the curse of God rests on incestuous marriages in general, while they appeal to the Church's authority in determining what marriages are to be considered as incestuous, and what not. For their appeal is to "*the decrees of the Fathers*,"—"*what has been forbidden in former canons*,"—"*the prohibitions of the priesthood*"; while the prohibitions of Leviticus are not once mentioned, nor even alluded to throughout the canon. This Council, then, will not be of much service to Dr. Pusey.

The
th
neil of
ane;—
ces
ing.

xiii.* The fourth Council of Orleans, convened in A. D. 541, simply confirms in its twenty-seventh canon, the respective canons of the third Council of Orleans and of the Council of Yenne.¹

Council
aris.

xiv. Sixteen years later, another Council was summoned at

¹ Labb. T. v. p. 386.

Paris (A. D. 557), mainly in consequence of the repeated usurpation of Church property and the invasion of Ecclesiastical rights, which had grown out of the civil war between Clotaire and his eldest son, then just concluded. However, in its fourth canon, it treats of the old question about prohibited degrees in the following terms: "The whole of the Brotherhood is of accord, that it must not only provide decrees concerning the present state of things, but also that it must provide a remedy for souls. Let no man therefore presume, contrary to the Lord's command, to choose unlawful marriages: that is, let no one dare to unite himself to his brother's widow, or his stepmother, and his paternal uncle's widow, or to his wife's sister; neither let him contract marriage with his maternal uncle's widow, or with his daughter-in-law, or with his mother's sister. Also, in like manner, we ordain that persons must abstain from marriage with a father's sister, a step-daughter, and a step-daughter's daughter."¹

It is observable that all the prohibitions here save two,—those of an aunt on a father's, and an aunt on the mother's side,—are directed against cases of affinity. The only expression in the canon that calls for any remark is the phrase, "*contrary to the Lord's command.*" One thing is certain. It cannot refer to the prohibitions in Levit. xviii.; since the list of the Council, if compared with the former, will be found to be at once guilty of omission and addition. If it should, however, be maintained that the phrase refers to the general principle, enunciated in the sixth verse, so that the law against incest in general is, according to this Council, Divine, while the practical application is left to Ecclesiastical law, we can well afford to let the opinion pass; for it is quite incompatible with Dr. Pusey's assertion. We are however inclined to believe that the expression has reference to that *general*

Its Canon
does not
in favour
the thesis

¹ "Convenit etiam universis patribus, ut non solum præsentium rerum actus, sed et animarum quoque debeant præparare remedia. Nullus ergo illicita conjugia contra præceptum Domini sortiri præsumat; i. e. fratris relictam, nec novercam suam, relictamque patris, vel sororem uxoris suæ sibi audeat sociare; neque avunculi quoque relictæ, neque nurus suæ vel materteræ conjugio potiatur. Pari etiam conditione a conjugio amitæ, privignæ, ac filis privignæ conjunctionibus præcipimus abstinere."—Labb. T. v. p. 816.

principle with regard to the sacramental purity of Christian marriage, which was revealed by our Lord, and handed down by His Apostles to the Church.

The
capitula of
Martin,

xv. This is, perhaps, the most fitting place to introduce the *capitula* of S. Martin, Archbishop of Braga, in Portugal. This saintly Prelate was, like his namesake of Tours, a Hungarian by birth; and, after having made a pilgrimage to the Holy Land, he retired to Portugal, where by his zealous labours he converted the Arian Suevi, with their king Theodimir, to the Catholic faith. His monastery of Dumo was raised to a Bishopric, and Martin was consecrated first Bishop in A.D. 567, whence he was transferred to the Archbishopric of Braga. His death occurred on the 20th of March, A.D. 580. His *capitula* consist of eighty-four canons, collected from Greek and Spanish sources. The seventy-ninth canon is to this effect: "If any woman should have married two brothers, or any man two sisters, let them be deprived of communion; but, at the hour of death, out of compassion, let communion be given."¹

one
thing.

i. Council
Tours.

xvi.* In A.D. 567, a Council was held at Tours; and, in the twenty-first canon, the subject of incestuous marriages is treated at great length. The canon is as follows: "But as concerns incestuous intercourse, we have deemed it right that *the ancient decrees of the canons* should not be broken. *For we do enough, if in this matter we observe the old decrees.* But it has been necessary to repeat them; because many talk, as though, by reason of the negligence of our predecessors, it had not been made known to them. But of a truth they lie; since we are sure that such and so great men would in no wise have given way to such negligence, but would have taught with assiduity what the Holy Scriptures testify. Wherefore it has seemed good also to summarize a few extracts from the rolls of our books, and to insert them in the canons, in order that by gathering together into one what is read in many books, it may be recited to the people. For thus has the Lord spoken." (Here follows a quotation from Levit. xviii. 5-20,

¹ "Si quis mulier duos fratres, aut si quis vir duas sorores habuerit, a communione abstinenceantur; usque ad mortem autem eis communicatio pro misericordia detur."—Labbe. T. v. p. 914.

omitting the celebrated v. 6, the last clause of v. 18,—which is sufficiently remarkable,—and v. 19.) “And in like manner the sacred sentence of the laws, which is clear in its utterance on this matter to every man, learned alike and unlearned, that whoever should have united himself in wicked nuptials to the daughter of his brother, or of his sister, or his first cousin, or his brother’s wife, let him be subject to this punishment, that he be separated from such union,” and the rest. Again: “Whatsoever woman after her sister’s death shall marry the sister’s husband, or if any man, on the death of his wife, should have united himself to her sister in a second marriage, let such persons know that they have become subject to legal censure by such union. In the Council of Orleans which the most invincible king Clovis requested to be convened, it was thus decreed.” (Here follows a quotation of the eleventh canon issued by that Council, the first of Orleans.) “In the canons of Yenne it was appointed by Pope Avitus” (Bishop of Vienna) “or by the rest of the Bishops” (here follows the tenth canon of the Council of Yenne); “also in the canons of the Council of Clermont it stands thus inserted.” (Here follows the twelfth canon of that Council.) “We confirm in all things what our Fathers have decreed, &c.”¹

¹ “De incestis vero conjunctionibus censuimus statuta canonum vetera non irrumpi. Satis enim facimus, si in hac parte statuta prisca servemus. Sed propterea fuit iterare necessarium, quia dicunt plures quasi illud per prædecessorum negligentiam sacerdotum illis non fuisset apertum. Sed revera mentiuntur, cum sciamus tales ac tantos viros nullatenus huic negligentiae subjacuisse, sed hoc quod scripturæ sanctæ testantur, assidue prædicasse. Propterea placuit etiam de voluminibus librorum pauca perstringere, et canonibus inserere, ut excepta lectio de aliis libris in unum, recitetur ad populum. Sic enim Dominus locutus est: . . . (Levit. xviii. citatur.) Itemque ait sacra sententia legum, quæ in hac explanatione omni homini, tam docto quam indocto aperta est, ut quisquis aut sororis, aut fratris filiam, aut certe gradu consobrinam, aut fratris uxorem, sceleratis sibi nuptiis junxerit, huic poenæ subiaceat, ut de tali consortio separetur, et reliqua. Item alia: Quæcumque mulier sororis suæ maritum post mortem illius acceperit, vel si quis ex viris mortua uxore sororem ejus aliis nuptiis sibi conjunxerit, noverit tali consortio se esse notabilem. In synodo Aurelianensi, quam invictissimus rex Clodoveus fieri supplicavit, sic decretum est. . . . In Epaonensibus canonibus a papa Avito, vel reliquis episcopis, constitutum est: . . . In canonibus etiam Avernensibus a beatissimis patribus sic habetur insertum: . . . Nos hoc quod patres nostri statuerunt, in omnibus roboramus, &c.”—*Conc. Turonense*, ii. can. xxi. Labb. T. v. p. 862.

The particular prohibitions of Leviticus quoted in this Canon,

It cannot be denied that here, for the first time, the particular prohibitions of Leviticus are individually inserted into the canon, with these words for introduction, "*For thus has the Lord spoken.*" But first of all, is it not curious that the general principle, on which Dr. Pusey lays so much stress as being pre-eminently *the* Divine Law, is carefully left out, while the verse before, and the one after it, are both cited? Moreover, the marriage with a deceased wife's sister is put in the category of prohibitions proceeding from human authority. But,—what is most important,—the reason of the insertion in the canon is given; viz. that whatever has been written on this matter in different codices may be collected into one form, so that it may be recited before the people, and they may thus understand exactly what marriages are forbidden by reason of consanguinity or affinity. The Levitical law is, therefore, quoted as containing certain prohibitions, which God had appointed for the Jews and the Church had adopted, together with others, in Her own Ecclesiastical discipline. Hence this quotation from Leviticus, with the exception of the preface, is classed indifferently with the Theodosian code and Ecclesiastical Canons; and its prohibitions are confirmed with the rest. Well, what does the preface amount to? It announces a historical fact, that God was the Author of the law; which no one can deny. It may have been even intended to impress the popular mind by the knowledge of the fact; but it never hints even, that these prohibitions are binding on Christians by virtue of their Divine promulgation on Mount Sinai. On the contrary, the whole wording and construction of the Canon combine to persuade us, that the Bishops of the Council considered them as laws, because of the fresh sanction which the Church had given them. To say the least,—there is not a word in the canon of this Council to justify Dr. Pusey's assertion.

but not as laws binding on the faithful by virtue of their Sinaitic promulgation.

It proves nothing in favour of the thesis.

xvii. Council of Auxerre,

xvii.* The next Council which refers to this subject is that of Auxerre in A.D. 578. The following are the canons that bear upon it:

"Can. 27. It is not lawful for any one to marry his step-mother.

"Can. 28. It is not lawful for any one to marry his wife's daughter.

"*Can. 29.* It is not lawful for any one to marry his brother's widow.

"*Can. 30.* It is not lawful to marry one sister, and then, on her death, to marry another sister.

"*Can. 31.* It is not lawful to marry a first cousin, *i. e.* one who is begotten of two brothers or two sisters" (the wording of this canon is curious; the meaning, plain) "nor may they who have been born of them [second cousins] be united in marriage.

"*Can. 32.* It is not lawful for a nephew to marry his uncle's widow."¹

We may pass on; for the pet theory of Dr. Pusey's rearing will find no rest for its feet here.

proves nothing.

xviii.* The third Council of Lyons, convened in A.D. 583, simply confirms the canons of previous Councils. "*De incestis vero conjunctionibus hoc placuit custodiri, quod prisca canonum statuta sanxerunt.*"²

xviii. The third Council of Lyons proves nothing.

xix.* There is nothing in the Council of Mascon (A.D. 585), which need detain us. It is quoted by Dr. Pusey, because its denunciations and menaces against such as contract incestuous marriages are so exceptionally severe. But it makes no mention of specific degrees, and neither directly nor indirectly refers to the Levitical code.³

xix. The Council of Mascon proves nothing.

xx. Between the years 590 and 604, *i. e.* during the Pontificate of S. Gregory the Great, this illustrious Pontiff published certain *capitula*, which received the subscription of fifty-eight Bishops and Priests in Synod assembled.

xx. S. Gregory the Great's *capitula*.

The fourth capitulum confirms the impediment of spiritual affinity. It runs thus: "If any one should have married his godmother, let him be anathema."

This *capitulum* provokes us to make a short digression.

A digression concerning

¹ "*Can. 27.* Non licet ut aliquis suam novercam accipiat uxorem.

"*Can. 28.* Non licet ut filiam uxoris suæ quis accipiat.

"*Can. 29.* Non licet ut relictam fratris sui quis in matrimonium ducat.

"*Can. 30.* Non licet duas sorores, si una mortua fuerit, alteram in conjugium accipere.

"*Can. 31.* Non licet consobrinam, hoc est, quæ de duobus fratribus, aut de duobus sororibus procreatur in conjugium accipere, nec qui de ipsis nati fuerint, in conjugio sociantur.

"*Can. 32.* Non licet ut nepos avunculi uxorem accipiat." — Labb. T. v. p. 960.

² See Labbe, T. v. p. 974.

³ Ibidem, p. 967.

...which persons very
inhibited by the laws passed at that time v
our Church, at present, and constantly p

To which categorical question Dr. Pusey
I am aware of. St. Ambrose expresses his
cousins might not marry ; but *the later deg*
are they ?) “ seem to have come in a good
Augustine says explicitly that the Divine
the marriage of first cousins.”

We shall see about S. Austin later on.
attention to this one statement ; viz. that in
sanguinity and affinity, other than those com
can Table, was marriage prohibited by the

The Commissioner urges the point : “ W
asks, “ instances of the marriage of par
adoption being prohibited, and marriages of
through godfathers and godmothers ? ”—
calls spiritual affinity.

Dr. Pusey makes rather an unnecessary
ties, partly civil, in answer to this simple c
extract the little that is pertinent to the que
tical legislation. “ At the Council of Trull
marriage] was forbidden also with her moth
mother of the god-daughter—

certain
markable
eases of
vidence
fore the
ommis-
ners.

"None of those were earlier?—None earlier.

"Those prohibitions you conceive *all* to have been of much later date than the authorities to which you now refer?—The earliest (that with a goddaughter) is above a century later."¹

There are one or two notes, which it is necessary to add here, for the complete illustration of these questions and answers.

a. We conclude from Dr. Pusey's answers, that the Primitive Church came to an end in the year 429, *i. e.* a year before the death of S. Austin; excluding, therefore, the Councils of Ephesus and Chalcedon from the rank of Primitive Councils. This may possibly astonish our Anglican readers as much as it astonished ourselves; but the fact is indisputable. We have merely to put three sentences of the evidence together; and forth comes the conclusion. Thus:

Five notes
thereupon.

"The earliest" (prohibitions of marriages "by the laws")
"(that with a god-daughter) is above a century later."

"Marriage with a god-daughter was forbidden in the Justinian Codex (A.D. 529)."

"Nor is there any ground to think these regulations to be those of the Primitive Church."

b. Dr. Pusey seems to confirm this theory by denying that "*at that period*" there were any prohibitions of marriage within degrees of consanguinity and affinity, other than those specified in the Anglican table. For, if we take the whole bearing of the evidence and the intention of the Commissioners, as evinced by their course of interrogation, it is plain that the investigation turned on the judgment of the Primitive Church concerning these impediments. But,—to say nothing of S. Ambrose for the present,—Dr. Pusey admits that marriage of first cousins was prohibited in A.D. 517, and of second cousins in A.D. 535. Therefore the Primitive Church must have come to an end before the sixth century; that is, long before the fifth and sixth Ecumenical Councils,—the second and third of Constantinople.

c. Our inference is further confirmed by the fact, that the impediment of spiritual affinity is expressly mentioned by S. Gregory and the Roman Congregation at the close of the sixth century.. But according to Dr. Pusey it was no regula-

¹ Evidence, &c. nn. 446-449. pp. 14, 15. The Italics are our own.

tion of the Primitive Church, but introduced a century later. Therefore, neither of these two Ecumenical Councils,—acknowledged and accepted, nevertheless, by the English Establishment in its second Book of Homilies,—was a Council of the Primitive Church; for the former was held in A.D. 553, and the latter, against the Monothelites, in A.D. 681.

d. Yet Dr. Pusey, when asked to continue his "*statement of the views held upon this subject in the early Christian Church*," begins with "*the early part of the sixth century*," and goes down to A.D. 694. So that there are two phases of the Church before the Greek schism, in Dr. Pusey's Ecclesiastical History. There is the Primitive Church, which finishes up a little before the death of S. Austin; and the early Christian Church, which stretches to the Trullan conciliabulum in A.D. 694.

e. It is remarkable that Dr. Pusey should have omitted any reference, in his elaborate collection of authorities, to a canon of such singular importance as this *capitulum* of S. Gregory.

To proceed, however, with our quotations from the same source:

"Can. 5. If any one should have married his brother's wife, let him be anathema.

"Can. 6. If any one should have married his niece, let him be anathema.

"Can. 7. If any one should have married his stepmother, or his daughter-in-law, let him be anathema.

"Can. 8. *If any one should have married his first cousin, let him be anathema.*

"Can. 9. If any one should have married from out of blood relationship, in which he has had blood relations, let him be anathema."¹

¹ "C. 4. Si quis commatrem spiritnalem duxerit in conjugium, anathema sit. C. 5. Si quis fratris uxorem duxerit in uxorem, A. S. C. 6. Si quis nep-tem in conjugium duxerit, A. S. C. 7. Si quis novercam aut nurum suam duxerit in conjugium, A. S. C. 8. Si quis consobrinam duxerit in conjugium, A. S. C. 9. Si quis de propria cognatione in qua cognatas habuit, duxerit in uxorem, A. S." (Labbe, T. v. p. 1588.) We more than suspect a clerical error in this last capitulum. For in the first Roman council held under Gregory II. in A. D. 721, we have the same capitula, precisely in the same order; but the ninth reads thus: "*Si quis de propria cognatione, vel quam cognatus habuit, duxerit uxorem, A. S.*"

These capitula will not serve Dr. Pusey's purpose. We can dismiss them.

The Capitula of S. Gregory prove nothing. xxi. Fifth Council of Paris,

xxi.* The next Council which touches on this subject is the fifth of Paris, held in A.D. 615.

The following is its fourteenth Canon: "We consider, moreover, that incestuous unions must be in a special manner cut off from the whole Christian commonwealth; so that if any one should have thought fit to sully by married intercourse his brother's wife, his step-daughter, *first or second cousin*, or again his paternal or maternal uncle's widow, or one consecrated in the habit of religion, let him be separated from the grace of Communion, so long as he does not meet the obligation of abstaining from illicit intercourse by a most manifest separation."¹

There is nothing, again, in this canon that calls for remark, though Dr. Pusey has referred to it in his preface.

proves nothing.

xxii.* Another Council was shortly after,—i. e. A.D. 625 (*aliter* 630)—convened at Rheims, which published a canon on this subject. Dr. Pusey cites it; and we call the reader's particular attention to its wording. It is with this object that we give it in full, though it specifies no degrees in particular. This eighth canon, then, decrees as follows: "Concerning incestuous unions. If any one, within a degree *determined in the canons*, should have united himself incestuously with those persons with whom he is prohibited (to marry) by *the Divine rules*, unless they give proof of their sorrow by separation, let them be deprived of Communion,"² &c.

xxii. Council of Rheims.

(Labbe. T. vi. p. 1457.) This is easily understood: "If any one should have married from among his blood relations, or with one whom a blood relation had had to wife, A. S."; which includes affinity as well as consanguinity. Nevertheless in the *Regia Maxima Collectio Conciliorum* (T. iii. p. 522), the same reading is given as in Labbe.

¹ "Incestas vero conjunctiones ab omni Christianorum populo censuimus specialiter resecari; ita ut si quis relictam fratris, sororem uxoris, privignam, consobrinam, sobrinam, vel relictam item patrui atque avunculi, vel in religionis habitu deditam, conjugii crediderit consortio violandam, tamdiu a communionis gratia segegetur, quamdiu ab illicitis conjunctionibus sequestratione manifestissima debeat abstinere."—*Conc. Parisiense*, v. Labbe, T. v. p. 1652.

² "De incestis conjunctionibus: si quis infra præscriptum canonibus gradum incestuoso ordine cum his personis, quibus a divinis regulis prohibetur, se conjunxerit, nisi poenitentiam sequestratione testentur communione priventur," &c.—*Conc. Rhemense*, can. 8. Labbe. T. v. p. 1690.

instance of
the use of
the expres-
sion, *Divine*
rules, for
Canon law.

It is plain that here *the determination of the canons, and the Divine rules*, are two forms of expression which represent identically the same object; so that the Ecclesiastical canons are considered by this Council to be, as regards the present subject-matter, the Divine rules of moral action. This fresh instance strengthens the presumption in favour of a similar interpretation of such phrases in other decrees, in which the context does not, directly or indirectly, determine their meaning.

xxiii. Ex-
cerpts of
V. Bede,

xxiii. There is a somewhat curious document which chronologically finds its place here. Dr. Pusey has no notice of it; yet if we are to judge of the degrees in guilt which the Church ascribes to different forms of incest, by the greater or less severity of Ecclesiastical punishment affixed to them respectively,—one of the Doctor's pet arguments, be it observed,—the document in question will afford us some rather strong evidence. Any how, it is most interesting; for it consists of a string of quasi-canons concerning different crimes and their remedies, which were collected by the Venerable Bede, and presented by him to Pope Gregory III., who published them, and gave to them his own express sanction. This work must have appeared sometime between the years 731,—when Gregory mounted the Pontifical throne,—and 735, when Bede died. Even, if published after his death, it could not have appeared later than 741, the year of the Pope's death.

We give the following literal translation of the eleventh excerpt: "They are called incestuous, who complete an act of carnal intercourse which is in itself unlawful. They are called incestuous, as being unchaste. For such as these are called incestuous: viz., if a son should have intercourse with his mother, if a brother with his sister, if a man should have married his stepmother or a blood relation; *if a cousin should have married a cousin*, or [if one should have married] his sister's daughter; if any one should have had intercourse with the widow of his paternal or maternal uncle, or should be polluted by union with a step-daughter, or one who *has* had intercourse with two sisters or with two brothers. If any son should have committed so grievous and horrible a sin with his mother, let him remain deprived of his

arms, according to the ancient decree, for fifteen years, in weeping and penitential sorrow, and let him never marry, and let him for seven of these years become an exile from the confines of his native land, and let him not communicate save in urgent peril of death. If he should have sinned with a daughter or sister, let him be subject to the same punishment. If with a niece or [her] mother, or with those above enumerated, let him, in accordance with the decree of the Fathers, submit to twelve years of penance; and let him never have a wife; and let that man give up bearing arms, and be banished. And let him not be admitted to communion, unless in imminent danger of the day of death. If perchance a woman should have had two brothers, or a man two sisters, let such be excluded from communion up to the hour of death; but at death let communion be given to them out of compassion. But if they should survive after receiving communion, and become convalescent, let them do full penance for the space of time appointed in the same Council. *If any one should have married his wife's sister after that wife's death, and she was one of the faithful, it has seemed good that he should be deprived of communion for five years, unless perhaps, by reason of ill health, it should have been found necessary to reconcile him sooner.*"¹

¹ "Incesti dicuntur, qui proprie illicitam commixtionem perpetrunt. Vocati incesti, quasi incasti. Incesti namque tales dicti sunt, si filius cum matre, si frater cum sorore, si quis novercam duxerit aut cognatam, si quis consobrinus consobrinam, aut sororis filiam, si quis relictæ avunculi misceatur aut patru, vel privignæ concubitu polluat, vel qui duas sorores, aut illa quæ duas fratres. Si quis filius cum matre tam funestum atque nefarium vitium perpetraverit, secundum antiquam diffinitionem inermis quindecim annos cum fletu et luctu pœnitentiæ, et uxorem nunquam accipiat, et ex his septem annos extra metas ipsius terræ exul fiat; et non communicet, nisi urgente mortis periculo. Si cum filia et sorore, simili sententiæ subjaceat. Si cum nepte vel cum [hujus?] matre, vel quæ superius nominata sunt, secundum paternam diffinitionem, duodecim annos se pœnitentiæ subdat, et uxorem nunquam accipiat, et ille vir arua relinquat, et exul fiat, nec communicet, nisi imminente diei mortis periculo. Si qua [quæ?] mulier duas fratres, aut si quis vir duas sorores habuerit, a communione abstineantur usque ad mortem; in mortem autem eis detur communio pro misericordia. Si vero supervixerint, communione accepta, et de infirmitate convalescerint, agant plenam pœnitentiam tempore constituto in eodem concilio. Si quis post obitum uxoris suæ sororem duxerit, et ipsa fuerit fidelis, quinquennium a communione placuit abstinere, nisi forte dari pacem velocius necessitas coegerit infirmitatis."—Labbe. T. vi. p. 1804.

cell against
the thesis.

The penultimate case, mentioned in this *excerpt*, must *be* understood of simultaneous concubinage. The last prescribes the Ecclesiastical penance to be imposed on the man that *has* married his deceased wife's sister, in the case of the *latter* being a Catholic. The reader cannot fail to notice the comparative lightness of the punishment.

xxiv. The
Council of
Lestines.
Proves
nothing.

xxiv.* We need only mention,—to maintain the completeness of our list,—the Council of Lestines (A.D. 743). It is referred to by Dr. Pusey;¹ but as it only prohibits incestuous marriages in general, and orders that such offences should be dealt with according to the old Canon Law,² it cannot be pleaded in favour of Dr. Pusey's famous assertion.

xxv. Roman
Council
under Pope
Zacharias.

xxv. There is a Council, near upon this time which,—so far as we have been able to discover,—has escaped the Doctor's notice. It is, however, of considerable importance, by reason of its bearings on the present controversy; as it enables us to understand more clearly, in what sense the Levitical prohibitions are quoted by the early Councils. It was the first Roman Council held during the Pontificate, and under the presidency of Pope Zacharias; concerning whom we shall have more to say in due course. It was called together in A.D. 743.

In its sixth canon it determines the question of incestuous marriages, in the following terms: "That no one may presume to unite himself in marriage with a *first cousin*, a niece, a step-mother, a brother's wife, or with his own blood relations; because it is written in the law of the Lord, 'Turpitudinem non discooperies of thy father's wife, of thy brother's wife, and of thy sister, quia turpitude tua est.' And if He commanded these things to be observed by the Hebrew people before the Incarnation of His only-begotten Son, how much more ought we, who hold to the teachings of the Christian religion, to abstain from unlawful marriages, lest, sunk deep in the quagmire, we be tormented together in the burning of eternal fire. But if any one should have been united in any such wicked wedlock and should have persisted in it, let him know that he is in-

¹ Evidence, &c. Preface, xlv.

² See Labbe, T. vi. p. 1538.

volved, by Apostolic authority, in the bonds of an Anathema. And no priest is to give him communion, as is contained in the preceding *capitulum*." (This fifth condemns under similar forms of censure any marriage with religious, or *with a god-mother*.) "And if he should have been diverted and separated from the illicit intercourse, let him be subjected to penance, as it shall seem good to the priest of the place."¹

In this *capitulum* there is, plainly enough, a contrast instituted between the moral code of the Old, and that of the New dispensation. The latter is treated as something much higher and more excellent; and is to be found in the *Christianæ religionis documenta*. Moreover, the Levitical prohibitions are quoted not only *historically*, but also as a rough model after the fashion of which the Catholic Church had moulded Her Canon Law in respect of such offences.

Tells again
Dr. Pusey
contention

xxvi.* Dr. Pusey's latest reference² is to a Council of Metz, convened in A. D. 753. He mentions it simply to show the increase in severity of punishment, with which later Councils visited these incestuous marriages. The citation is made in one of those typical notes of his, where the whole gist of the question lies hopelessly buried in a crowd of references. It will, however, be of some service to quote the canon at length, as its witness is not unimportant.

xxvi. Council of Metz

After this manner, then, decrees the first canon of this Council: "If a man should have committed incest in these cases with one consecrated to God, *or with his godmother, whether in baptism or confirmation*, or with mother and daughter, or with two sisters, or with his brother's or sister's

¹ "Ut consobrinam, neptem, novercam, fratris uxorem, vel etiam de propria cognatione, nullus præsumat in conjugio copulare, quia scriptum est in lege domini: *Turpitudinem uxoris patris, uxoris fratris, atque sororis tuæ non revelabis, turpitude enim tua est.* Et si ab Hebraico populo ante incarnationem unigeniti Filii sui hæc servanda mandavit; quanto amplius nos, qui Christianæ religionis documenta tenemus, ab illicitis connubiis observare debemus, ne demersi in voragine, ignis æterni concrememur incendio. Si quis vero in hoc nefario conjugio convenerit, et in eo permanserit, sciat se auctoritate apostolica anathematis vinculo esse innodatum. Et nullus sacerdos illi tribuat communionem, ut in superiori capitulo continetur. Et si inclinatus divisusque fuerit ab illicita copula, pœnitentiæ subdatur, ut sacerdos loci consideraverit."

—*Con. Roman. I. sub Zacharia, S. P. Labb. T. vi. p. 1547.*

² Evidence, &c. Preface, p. xliii.

daughter, or with his niece, or with *first or second cousin*, or with paternal or maternal aunt, let him forfeit his money, if he has any; and if he should not be willing to amend, let no one receive him or give him food. And if any one should have done so, let him pay to our Lord the King, sixty pounds, till the man himself shall have reformed. And if he has no money, if he is a free man let him be cast into prison, till he has satisfied; if he be a slave, or bondman made free, let him be beaten with many stripes; and if his master should have allowed him to fall again into such a crime, let him pay the same sixty pounds to our Lord the King.”¹

s Canon
es not
em to refer
marriage.

No one can doubt about the severity of such punishments; but it seems all but certain, from the wording of the canon throughout, that the crimes contemplated here are not incestuous marriages, but sins of incestuous connection. Should it be so, the case of marriage with a deceased wife's sister is not alluded to by the canon. Indeed, if it should appear that the other instances refer to marriages, even then,—looking to the peculiar wording of the canon, as contrasted with the wording of those canons where marriage with a deceased wife's sister is distinctly prohibited,—we should be inclined to class the act forbidden in this decree with that simultaneous cohabitation with two sisters, which is forbidden in the penultimate clause of the V. Bede's *excerpt*.

nyhow tells
gainst the
esis.

Be this as it may, it is observable that all these cases of incest enumerated above are included indiscriminately under one and the same sentence;—a fact, by the way, which seems to favour our supposition. So that if it be (which we more than doubt,) marriage with a deceased wife's sister that is so severely punished, marriage with a godmother, with a first or

¹ “Si homo incestum commiserit de istis causis, de Deo sacrata, aut comatre sua, aut cum matrinali spiritali de fonte et confirmatione episcopi, aut cum matre et filia, aut duabus sororibus, aut cum fratris filia, aut sororis filia, aut nepte, aut cum consobrina atque sobrina, aut cum amita vel matertera, de his criminibus pecuniam suam perdat si habet, et si emendare se noluerit, nullus eum recipiat, nec cibum ei donet; et si hoc fecerit, sexaginta solidos domno regi componat, usquedum se ipse correxerit. Et si pecuniam non habet, si liber est, mittatur in carcerem usque ad satisfactionem: si servus aut libertus est, vapuletur plagis multis: et si dominus suus permiserit eum amplius in tale scelus cadere, ipsos sexaginta solidos domno regi componat.”—*Synod. Metensis*, Labb. T. vi. p. 1660.

even a second cousin is in the same condemnation. No argument, therefore, can be drawn from the severity of the punishment which does not apply equally to the latter with the former. But one of Dr. Pusey's arguments, in favour of his contention that prohibition of marriage with a deceased wife's sister forms part of the natural law, is derived from the severity of Ecclesiastical penance imposed on such as violated it. Then the same must be said of the prohibitions to marry a godmother, or a first or second cousin; which Dr. Pusey would be the last to admit.

xxvii. There is a curious French Council, held in the reign of Pepin at Compiègne, in the year 756. We refer to it merely as a *historical witness*, not as an authority in any way. For it is one sad instance out of many, how Provincial synods may fall into the most pernicious errors, when left to themselves; and that we have no security against their aberrations, save in the approbation of the Apostolic See. In its eighth canon, it positively permits a husband whose wife has committed adultery, to marry another woman; and in its thirteenth, it allows a man, whose wife has become a religious, to do the same.

xxvii. Council of Compiègne.

However, its canons are exclusively concerned with the question of Christian marriages; and they are so far of value, as testifying to the Ecclesiastical law, prevalent at that time in the French Church with regard to the prohibited degrees.

Its first canon is thus worded: "If persons are found to have been married in the fourth degree, we do not separate them; but if they should be found to be married in the third degree, let them be separated. And we separate those, one of whom is related in the fourth, the other in the third degree, and who are found to be married."

In the second canon it is decreed: "If two are related in the third degree, whether man or woman, or one in the third and the other in the fourth; if one dies, the other cannot marry his wife; and if it should be found that they are married, they must be separated. The law is one and the same for men and women."¹

¹ "Si in quarta progenie reperti fuerint conjuncti, non separamus; in tertia vero si reperti fuerint, separentur. Et eos qui unus in quarta, alius in tertia sibi pertinent, et conjuncti inveniuntur, separamus."—*Can. 1.*

"Si duo in tertio loco sibi pertinent, sive vir, sive femina; aut unus in

Proves
nothing.

It would seem, therefore, apart from a dispensation, (of which the Council naturally enough says nothing,) that consanguinity or affinity within the first three degrees was considered by the French Church in the eighth century to be an *impedimentum dirimens*.¹

xxviii. The
Council in
Trullo.

xxviii.* Before summing up what has to be said concerning the nature and amount of evidence afforded by these Councils, we must pass in review another so-called Council in the East, which Dr. Pusey introduces to his readers in lordly phrase. "In the Eastern Church," he informs the Commissioners, "the Council of Trullo" (he should have said *in* Trullo, as the reader will presently see,) "*acknowledged throughout*" (A. D. 694, can. 54), "enlarges the canons of St. Basil, founding them upon Holy Scripture, *i. e.* Lev. xviii. 6."²

Dr. Pusey
represents it
as a received
Council of
the Church.

Now any ordinary reader, unacquainted or only superficially acquainted with Ecclesiastical history, (and unfortunately with us, in the present day, such persons, even among educated people, are the rule rather than the exception,) would naturally conclude, from the like phrase, that this Quini-sexst Council had been at all times universally recognized by the Catholic Church as a genuine and legitimate Council. Will it, then, be believed that as early as the beginning of the eighth century it was unsparingly condemned by no less a person than the Venerable Bede? In his little treatise, "*De sex ætatibus hujus sæculi*," he writes of it as follows: "He," (*i. e.* Justinian the Younger), "sending his chief eunuch, ordered that Sergius of blessed memory, Pontiff of the Roman Church, should be carried off to Constantinople, because the latter would not favour, and confirm by subscription, his erratic Council, which he had held at Constantinople."³

It was a
factious con-
ciliabulum
according to
the testi-
mony of
V. Bede.

tertio, et alter in quarto; uno mortuo, non licet accipere uxorem ejus; et si inventi fuerint, separentur."—*Can. 2. Concil. Compendinese*, Labb. T. vi. p. 1695.

¹ There is a Council, precisely similar in its exceptional decrees, held at Worms, in A. D. 752. What has been said of the Council of Compiègne applies equally to it.—*Collectio Regia Conc. T. iii. p. 1990*.

² Evidence, &c. n. 460. p. 18; cf. n. 471. p. 31. The Italics, as elsewhere generally, are our own.

³ "Hic beatæ memoriæ Pontificem Romanæ Ecclesiæ, Sergium, quia erraticæ (alit. hereticæ) suæ synodo, quam Constantinopoli fecerat, facere et subscribere voluisset, misso Zacharia, Protospatario suo, jussit Constantinopolim deportari."—§ *Justinianus Minor*. Hence Cardinal Humbert dis-

A short history of this Council,—or rather Conciliabulum,—will serve better than any words of ours to illustrate the Doctor's statement that "*it was acknowledged throughout.*"

Ten years after the close of the sixth Ecumenical Council (or the third of Constantinople, convened in that city in A. D. 681, for the condemnation of the Monothelite heresy,) this assemblage of Bishops was ordered by the Emperor, Justinian II., and held its sittings in Trullo,—a hall, so called, of the Imperial palace. It is for this reason sometimes called the Council *in Trullo*; sometimes it goes by the name of the Quini-sexth, because it was regarded *by the Greeks* as a sort of supplement to the fifth and sixth Ecumenical Councils. These latter had issued no disciplinary canons; and the Greek Bishops were summoned professedly to supply this omission. Its history

For several reasons its acts displeased the Supreme Pontiff; and accordingly nothing would induce him to accept or confirm them. In the first place, "the canons of the Apostles," as they were called, had been declared apocryphal by the Western Church; yet they were, in its acts, pronounced to be authentic and obligatory. And this *imprimatur* not only embraced the first fifty canons, but extended to the thirty-five which follow in the Greek collection. Among these latter, however, were two which taught a heresy already of long time condemned. In the second place, the ancient disciplinary canons concerning the celibacy of the clergy were annulled, and a most scandalous laxity encouraged by its decrees. In the third place, those wily Greeks had endeavoured to gain their point about the See of Constantinople, by smuggling into their acts that same canon which they had managed, on previous occasions, to get inserted among the decrees of general Councils, without, however, being ever able to obtain

puting against Nicetas (*Thesauri Monum. Eccles. ed. Jacobi Basnage*, T. iii. p. 318) says, "Non autem mirum si Agathoni Papæ et SS. Patribus sextæ synodi, vestra imputatis *deliramenta*, et quæ aut corruptis aut finxistis capitula. . . . Unde nos scientes sextam synodum ad destruendam hæresim Græcorum Monothelitarum, non autem ad tradendum Romanis novas institutiones congregatam, capitula, quæ nobis ejus auctoritate opponitis, *omnino refutamur*; quia prima et Apostolica sedes nec aliquando ea accepit, nec observat hactenus; et quia aut sunt nulla, aut, ut vobis libuit, depravata sunt." Quoted by Trombelli in his tract de Sacramentis, T. iii. de Matrim. disp. ix. c. 6. a. 3. n. 1. p. 128. Bononiæ, 1783.

its confirmation from the Pope. Fourthly, the Council had not been convened by the Pope, but by the Emperor.

Justinian knew full well, how essential it was to their validity that these acts should be confirmed by the Vicar of Christ. He accordingly sent a copy of them to Rome, and demanded that Sergius should affix his signature. The Pope would neither receive, nor allow them to be read in his presence, declaring that he would rather suffer death than confirm such errors. The Emperor, on receiving information of the Pontiff's firmness,—or as he and his courtiers would have doubtless termed it, obstinacy,—sent his first equerry to Rome with orders to seize the person of the holy Father, and to bring him by force to Constantinople. It was easier said than done. For the armies of the West heard of the proceeding; and as they were not inclined to part with their Pope so easily, they concentrated on Rome. The unfortunate Zacharias, the afore-said equerry, became alarmed for his life; and saved the latter, at the expense of his official dignity, by seeking a safe asylum under the Pope's bed. Sergius persuaded the excited multitude,—for the populace *en masse*, some armed, others unarmed, had surrounded the Pontifical Palace as a body-guard of volunteers,—to spare the life of the poor, abject wretch; so they contented themselves with driving this tool of a lawless Emperor out of the gates of Rome, amid a perfect storm of groans and execrations. Such was the fate of the *conciliabulum* in Trullo, which, Dr. Pusey assures us, was received throughout;—received, very much in the same manner as its luckless lackey was received, by the Roman population.¹

But this is no reason why we should not take a look at its canons; for utterly devoid of all authority, as they undoubtedly are, in the Catholic Church, they may serve as witnesses to the opinion held at that time by the Eastern Prelates concerning these incestuous marriages; and, at all events, it would be well to see what help they afford Dr. Pusey in his emergency.

¹ See Rohrbacher, *Histoire universelle de l'Eglise*, L. i. T. x. p. 404 et seqq. Paris, 1843; and Fleury, *Histoire du Christianisme*, L. xi. § 49 et seqq. T. iii. p. 33. Paris, 1840. Fleury's known Gallicanism has induced him to make the erroneous statement that the Pope's Legates were present at this unauthorized convention. Consult Rohrbacher on the point.

We now proceed, therefore, to set before the reader the words of this pseudo-canon. "Since the Divine Scripture clearly teaches us, 'Thou shalt not go in to any relation of thy flesh ut reveles turpitudinem ejus,' S. Basil enumerates certain prohibited marriages in his canons, passing by most of them in silence; and by both these things has provided us with what is of advantage to us. For avoiding the multitude of shameful terms, so as not to pollute his discourse by the words, he comprehended the impurities under general expressions, by which he showed us in summary what marriages are forbidden by the laws. But since by reason of such silence and of ignorance concerning the prohibition of such lawless marriages, confusion of nature has taken place, we have determined to explain more clearly concerning this matter, and decree that from this time forward whoever should unite himself in marriage with his cousin, or if father and son should marry mother and daughter, or two sisters; or if a mother and daughter should marry two brothers, or two brothers should marry two sisters, they fall under the rule of seven years' penance, publicly separating themselves from this unlawful concubinage."¹

Its canon
which is
brought
evidence.

It is noticeable that not one of these marriages is forbidden in Leviticus. Only one is a case of consanguinity, and that is the marriage of *first cousins*; the rest are marriages between persons connected neither by consanguinity nor affinity, which had been prohibited by no other authority, human or Divine, save by this sapient convention of Eastern Bishops, who appear to have been in utter ignorance of that first

It prohib
marriages
forbinder
no law,
Divine or
human.

¹ "τῆς θείας ἡμᾶς οὕτω σαφῶς ἐκδιδασκούσης γραφῆς, οὐκ εἰσελεύσῃ πρὸς πάντα οἰκείον σαρκὸς σου ἀποκαλύψαι ἀσχημοσύνην αὐτοῦ, ὁ θεοφόρος Βασιλεὺς τινὰς τῶν ἀπηγορευμένων γάμων ἐν τοῖς οἰκείοις κανόσιν ἀπρηριθμήσατο, σιωπῇ τὰ πλεῖστα παραδραμῶν, καὶ κατ' ἀμφοτέρα κατασκευάσας ἡμῖν τὸ ὠφέλιμον· τὸ γὰρ τῶν αἰσχυρῶν ὀνομασιῶν πλῆθος παραιτησάμενος, ὥς ἂν μὴ τὸν λόγον καταρυνπαῖνοι τοῖς ῥήμασι, γενικοῖς ὀνόμασι τὰς ἀκαθαρσίας διέλαβε, δι' ὧν περιεκτικῶς ἡμῖν τοὺς παρανόμους γάμους ὑπέδειξεν. ἐπεὶ δὲ τῇ τοιαύτῃ σιωπῇ καὶ τῷ ἀγνώστῳ τῆς τῶν ἀθέσμων γάμων ἀπαγορεύσεως λαυτὴν ἢ φύσιν συνέχεε· συνειδόμεν γυμνότερον τὰ περὶ τούτου ἐκθέσθαι, ὀρίζοντες ἀπὸ τοῦ νῦν τὸν τῇ οἰκείᾳ ἐξαδέλφῃ πρὸς γάμου κοινωνίαν συναπτόμενον. ἡ πατέρα καὶ υἱὸν μητρί καὶ θυγατρὶ· ἡ δύο κόραις ἀδελφαῖς πατέρα καὶ υἱόν· ἡ ἀδελφοῖς δυοῖν μητέρα καὶ θυγατέρα· ἡ ἀδελφούς δύο δυοῖν ἀδελφαῖς, ὑπὸ τὸν τῆς ἐπταετίας πίπτειν κανόνα, ἀφισταμένων αὐτῶν προδήλως τοῦ παρανόμου συνοικεσίου."—Canon liv. Labb. T. vi. p. 1167.

principle in Canon Law which teaches that *affinity does not beget affinity*. Then, how is the authority of Leviticus introduced into their so-called canon? The sixth verse is quoted, it is true, as an embodiment in itself of a principle of the natural law. But there is not a syllable about the special prohibitions; nor are any of them adopted in the decree. Furthermore, when these Prelates come to the point of the special prohibitions, they refer pointedly to S. Basil and not to Leviticus. Lastly, there is not a syllable which even hints at the idea that those prohibitions in Leviticus form any part of the natural law, or that they are binding on Christians by virtue of the Sinaitic promulgation. And so this last conciliar authority which Dr. Pusey produces shares the fate of most of its predecessors. Its value for him and his contention is simple zero.

t quotes the general principle in Leviticus; but for the prohibitions, S. Basil.

Proves nothing.

Summary of the evidence.

We now proceed to sum up the evidence which has either been adduced by Dr. Pusey from the earlier Councils of the Church, or been supplemented by us as additions to his imperfect list.

Let us, first of all, distinctly call to mind the avowed object for which the Oxford Professor of Hebrew has catalogued the canons, passed by these Councils, in this matter of prohibited marriages. It was to show, for the period through which these Councils extend, that marriage within the prohibited degrees of affinity, and particularly "*marriage with a deceased wife's sister*," was "*prohibited by Holy Scripture as understood by the Church for fifteen hundred years*." Such is the venturesome heading to his published evidence, printed on the titlepage.

We shall examine presently the proof for this assertion which he has gathered from the writings of the Fathers, especially with regard to those earlier centuries that were antecedent to the Councils under present review. But we desire now to confine the attention of our readers to Dr. Pusey's statements concerning the period which has been under consideration in the present chapter, and to the amount of justification or support to those statements which the canons cited afford.

Dr. Pusey asserts

Of these times Dr. Pusey says, "This mind of the Church"

(about the Levitical prohibitions, &c.) "continued to be expressed in Councils and Fathers. . . . It was the deliberate judgment of the Church, and expressed by thoughtful writers, that Lev. xviii. is part of the moral law, and unchangeable."¹ So, again, in the same preface, he introduces "very distinct stages" with regard to these prohibited marriages in the Christian Church. For the present, we confine ourselves to the quotation of his first two stages.

1. "Until about the beginning of the 6th century, when all marriages forbidden in Holy Scripture, whether expressly or by implication, and these only, were absolutely forbidden by the Church, and held to be incest. With this the Church of England coincides;" so that, that rather indefinite '*implication*' is to be determined for us, be it observed, by help of the Anglican table.

2. "Until the end of the 11th, during which other marriages were prohibited by Ecclesiastical law; but in cases of newly-converted individuals or nations, this ecclesiastical law was not enforced;" *i. e.* in plain words, they were dispensed.²

Again: "It appears from this," (a quotation from the Pœnitentiale of Theodore, Archbishop of Canterbury), says Dr. Pusey to the Commissioners, "that although the degrees prohibited in the Western Church were still being extended, the distinction was *preserved* between degrees prohibited, or thought to be prohibited, by the Divine law and those of the Church, *in that marriage within the former was dissolved, not within the latter.*"³

We require, therefore, proof of the following propositions from an examination of the canons produced in this chapter.

i. That, in the judgment of the Church, Leviticus xviii. forms part of the moral law and is unchangeable.

ii. That consequently all the Levitical prohibitions, as expressly contained there, and all the additional prohibitions mentioned in the Anglican Prayer-book, as contained therein by *implication*, and these only, were held by the Church to form part of the natural law,—to be the Divine law, which

the teaching of the Church for fifteen centuries to have been, that Levit. xviii. formed part of the natural law; and that its particular prohibitions, explicitly or implicitly contained there, also formed part of that law, and were unchangeable. Dr. Pusey's stages of Church History.

The four assertions that had to be proved in connection with these stages.

¹ P. iii.

² P. lx.

³ Evidence, &c. n. 460. p. 18.

was unchangeable, and their violation, and their violation only, to be incest.

iii. That till the beginning of the sixth century, all marriages forbidden in Holy Scripture, "whether expressly or by implication," in the sense already explained,—and these only,—were forbidden by the Church, and held to be incest.

iv. That when other degrees, after the beginning of the sixth century, began to be prohibited by Ecclesiastical law, while the added prohibitions were not enforced in the case of newly-converted individuals or nations, nevertheless within the degrees prohibited by the Divine law as just explained,—i. e. within the degrees enumerated in the Anglican Prayer-book,—such marriage was always dissolved; so that in effect we have an easy test whereby to discern a true *implication* from a false one, viz. the necessity imposed by the canons, in the former case, of dissolving the marriage.

Now we venture to affirm that there is not a shadow of ground, in these canons, for any one of these assertions.

I. We will take the first two together, (as they are essentially related), and begin with them.

a. Twenty-eight distinct authorities,—exclusive of the Apostolic Canon,—have been quoted in these pages. Out of these twenty-eight, there are only five that refer to Leviticus at all. Of these, one only quotes the particular prohibitions,—the Council of Tours; another refers to the Old Law only to contrast it with the New Law of Christ. Besides these five, one—the third Council of Orleans—quotes from Deuteronomy; but in such a way, as shows that the Bishops used the text only by way of illustration. Furthermore, in Dr. Pusey's first stage of Ecclesiastical history, seven authorities, if we include the so-called Apostolic Canon, have appeared. Of these no one, save the Roman Synod in A. D. 402, refers to Leviticus; and the Roman Synod only does so, as we have remarked before, to magnify the superior excellence of the new Law. In Dr. Pusey's second stage, twenty-two authorities have been brought forward. Of these only five refer to Leviticus at all; and one of these we ourselves have added to the Doctor's list. Not one, however, of the five affords the slightest ground for the assertion, that the Church ac-

nothing of
the sort is
proved, as
regards the
first stage, up
to the sixth
century.

known Leviticus xviii. with its prohibitions, expressed and implied, to form part of the natural law, and to be unchangeable.

In a word, there is not a particle of evidence from these Councils, which stretch from the beginning of Ecclesiastical History down to the middle of the eighth century, to justify Dr. Pusey's assertion, that in the Church's judgment Leviticus xviii. formed part of the natural law.

b. There is still less foundation, if possible, for the assertion that the Councils made any such distinction, as Dr. Pusey affirms, between the degrees mentioned either explicitly, or implicitly according to Anglican interpretation, and the other degrees added, if so be, afterwards. There is not one word in any one of all the canons cited that even suggests the idea. On the contrary, their evidence, as we shall see directly, confirms a directly opposite conclusion.

c. It is a most gratuitous, nay, an utterly erroneous statement, that the Councils only call violations of the Levitical prohibitions incest. For instance; the Council of Yenne declares that it considers as incestuous persons those who marry first or second cousins; and this is the first Council that uses the word at all. The third Council of Orleans expresses itself in precisely the same way. The fifth Council of Paris uses the same language. The excerpt of the Venerable Bede includes a cousin, not mentioning the degree. The Council of Metz includes, under the term, marriage with first or second cousins, and likewise marriage with a godmother. But these are the only Councils that make use of the expression at all.

d. It is observable, as a rule, that in the lists of incestuous marriages, whether short or more extended, the cases are given indifferently, as a rule; so that neither from the wording, nor from the position in the list, can any foundation be discovered for the slightest distinction.

II. Let us now proceed to determine what proof there is from these Councils, that, till the beginning of the sixth century, all marriages forbidden in Holy Scripture, whether expressly or by *implication*,—and these only,—were forbidden by the Church, and held to be incest.

a. First of all, there are at least thirteen prohibited degrees in Leviticus; those are expressly forbidden. There are sixty in the Anglican table; thirty which apply to men, thirty which apply to women. These include, of course, the thirteen in Leviticus; the rest are revealed virtually. Will it be believed that up to the sixth century only four prohibited marriages are mentioned in all the canons collected? Yet so it is; and they are marriage, 1. with a wife's sister, 2. with a brother's widow, 3. with a husband's brother, 4. with a niece.

b. It is, therefore, plain that no argument can be constructed of any value on such scanty evidence, more particularly when we consider two remarkable facts; the one, that three out of the four prohibitions refer to cases of affinity, the other, that the one case of consanguinity was not forbidden by Holy Scripture, and has been considered by the Doctors of the Synagogue and by Catholic Theologians to have been Divinely permitted to the Jewish people.

c. It is further worthy of attention, that three out of the seven canons which represent this period, refer exclusively to clerics; and, as the marriage with a niece is only mentioned in those three, the whole list of the early Church, up to the sixth century, contains just three cases of affinity, and that is all.

With all this before us, we can estimate at its due measure this voice of the Church for six out of the fifteen hundred years.

Nothing of the sort is proved as regards the second stage from the sixth century to the end of the eleventh.

III. Let us now turn to the fourth point in Dr. Pusey's doctrinal statement, betaking ourselves to that second stage in his Church history, when other degrees began to be prohibited, but were always distinguished from the express or implied Levitical prohibitions, inasmuch as these latter were always dissolved, whereas the Ecclesiastical additions were often dispensed in the case of converts.

a. Out of the twenty-two authorities produced as the representatives of this period,—and they are the only Councils during that period, so far as we have been able to discover, that treat of these incestuous marriages,—nine expressly mention marriage with first cousins, and five include marriage

with second cousins. If we take into account, that in six of the remainder no list is given,—that in the seventh only one case is proscribed, that in an eighth two parallel cases only,—that of a man marrying two sisters, and of a woman marrying two brothers,—are specified, and that in the last, marriage with a cousin, without determining which degree, is the only case of consanguinity or of real relationship, the evidence becomes startlingly general and proportionally conclusive.

b. Only sixteen distinct cases of incestuous connection are mentioned at all, including those with first and second cousins; so that the total does not amount to half the Anglican list.

c. First and second cousins are prohibited to marry in precisely the same way, and with the same strength of expression as the rest. Neither is there anything in the order of specification to mark any distinction.

d. Those who have married first or second cousins are forced to separate by the Council of Tours, by the third of Paris, and by the Roman Council under Pope Zacharias.

e. In the Council of Yenne persons who have married a brother's widow, a half-sister, a step-mother, an uncle's wife, a niece, a daughter-in-law, if they had contracted such marriages before the publication of the Conciliary decrees, were allowed to retain their wives; and no dissolution of marriage was exacted.

f. In the *capitula* of S. Gregory the Great, the same anathema is pronounced on the man that has married his god-mother, as on him who has married his niece or step-mother; and we find these cases at the head of the list.

g. In the third Council of Orleans, if recent converts, when they were catechumens and ignorant of the canon law on the matter of these marriages, had espoused a father's widow, a wife's sister, an uncle's widow, indulgence was to be shown them, and the marriage need not be dissolved.

Is it possible to imagine a more complete contradiction of every one of Dr. Pusey's statements? We may safely aver, then, that for eight centuries out of the fifteen Dr. Pusey's title-page must be corrected; and that the voice of the Church must not be claimed by him in favour of his Levitical propensities, at least, so far as Councils are concerned.

Dr. Pusey's
stages off the
read.

Review of
Dr. Pusey's
censure on
the Rev. Mr.
Jenkins.

We cannot conclude this elenctic summary of the Synodical evidence volunteered by Dr. Pusey, and completed here and there by ourselves from Councils or decrees which had escaped his notice, without returning for a moment to his unjust attack on the Rev. Mr. Jenkins, which we quoted in an early part of the present chapter. We do so, not particularly with a view of defending the gentleman assailed, who is quite able to take care of himself, but that we might be able to exhibit to the reader two canons that Dr. Pusey seems to have adopted in his study of Ecclesiastical history, which we would strongly dissuade those from adopting who may be anxious to pursue with profit to themselves this interesting branch of sacred literature.

i. One is that a succession of six councils in the space of about two hundred and fifty years, with others following "*at different periods near one another,*" all treating on the same question of Ecclesiastical law, cannot be called a very constant succession of those decrees, in such a way as to justify the student in deducing, from their frequent repetition, any conclusion concerning the moral tendency of the people with regard to the subject-matter of such decrees.

The Doctor complains against the Rev. Mr. Jenkins for doing so, and accuses him of inadvertent misrepresentation.

The list, as the gentleman in question gave it, was as follows: "A.D. 305, 314, 370, for the fourth century; none for the fifth; A.D. 517, 538, 578, for the sixth.

Well, as things went in those days, we should have deemed this to be tolerably frequent for legislation on one point of moral observance;—six councils in about two centuries and a half. It would almost seem as though the Doctor thought that the infant Church, scarcely emerging from the catacombs, had nothing else to do but meet everywhere in Council, in order to reimpose former statutes, and enforce the observance of "*the natural law.*" However, as Dr. Pusey is displeased that there should be a hiatus of two hundred years, we will perfect the list of Mr. Jenkins by additions of our own; and it will now stand as follows:

A.D. 305, 314, 374, for the fourth century; three in the fifth century, whose date cannot be fixed to a year; A.D. 511,

517, 531, 533, 535, 538, 541, 557, 567-80, 567, 578, 583, 585, 590-604, for the sixth century, *i.e.* at the rate of a Council for about every seventh year; A. D. 731-35, 743, 753, 756, for the first half of the eighth century.

ii. "But," says Dr. Pusey, (and here he suggests his second canon) "what, when in history the Council of A. D. 305 is in Spain (Eliberis), that of A. 314 in Asia (Neo-Cæsarea), . . . that of A. 517 was in France?"¹

It would appear then, that in the Doctor's judgment, either all the Councils of the Church ought to meet in one locality, or that a knowledge of Catholic jurisprudence and moral discipline, as derivative from decrees of Councils, in order to be solid and reliable, ought to be gathered from Synods convened in one particular country. We, on the contrary, should have thought that the more varied and cosmopolitan were the sources, the more trustworthy would be the evidence of Catholic practice.

However, the mainstay of Dr. Pusey's Ecclesiastical argument consists in the unvarying prohibition of these incestuous marriages, under pain of censures and heavy penances, by Councils in different quarters of the world, and from very early times; from the severity of language with which Councils and Fathers concur in denouncing them; and from their occasional appeal to the authority of Holy Scripture. From such premisses Dr. Pusey concludes that these prohibitions must form part of the natural law.

Now we have already had repeated occasion to expose *per transennam* the weakness of this inference; but we have a mind to deal it a final blow, by way of conclusion to this unavoidably prolix chapter, and we have chosen, as our weapon of offence, an *argumentum ad hominem*. It will enable us at once to vary the subject, and to illustrate a Catholic practice about which the strangest misconceptions are afloat in this country. We allude to clerical celibacy. Doubtless our readers will have seen in popular tracts and pamphlets, issuing from Protestant societies, various dates assigned, according to the exuberant imagination of the writer, for its first insti-

The main points of Dr. Pusey's argument furnished by severity of punishment, severity of language, and appeals to Scripture.

Answered by an *argumentum ad hominem*. These Canons applied severally to the primitive law of clerical celibacy. Protestants ill-informed on this matter.

¹ Evidence, &c. Preface, xlii.



A mistake of
Miss Strick-
land about it.

tution in the Church. Even among educated persons the most erroneous ideas are current on this point. Let us take an instance. No one appreciates more gratefully than the writer the services which Miss Strickland has rendered to the true study of English history ; yet she even, with all her efforts to be impartial, is not exempt from the prejudices so rife among us. In her beautiful biography of Henrietta, wife of Charles I., she takes upon herself to soften down the fact, (which evidently startles her, as it would most people), that all our sovereigns, with the single exception of Edward VI., down to the reign of William and Mary, took an oath at their coronation to preserve the Church of England as it was in the days of S. Edward the Confessor. So, in a note she informs her readers, that "the primitive Church of England under Edward the Confessor, . . . allowed of the marriages of the secular clergy."¹ Whence she has obtained this novel information, she does not disclose ; we can only therefore say that she has been misinformed.

A supposed
Royal Com-
mission on
the subject.

The prevalence of such misconceptions among the English public led us to wish that Catholic evidence might be produced, similar to that which has been given us by Dr. Pusey concerning marriage with a deceased wife's sister. While thus filled with alternate desires and regrets, we were allowed, for our consolation, a short peep into futurity ; and saw there the printed "Report of the Royal Commission appointed by his Majesty Edward VII. in 1898 to inquire into the institution of celibacy in the early Christian Church, with reference to its present disuse and discouragement in the Church by law established in these realms."

We quote from the future evidence of the Rev. the Professor of Ecclesiastical History and Canon Law in the Catholic Seminary of the Archdiocese of Westminster.

Evidence of
the Profes-
sor of Eccle-
siastical
History in
Catholic
semin-
ary.

518. "Your attention has been directed to the consideration of the institution of celibacy in the Christian Church?—Yes ; and I wish at the outset to observe, that 'if people could but bring themselves to think what is the weight of the

¹ Agnes Strickland's *Lives of the Queens of England: Henrietta Maria*, vol. viii. ch. i. p. 87, note. London, 1845.

eliberate judgment of the Church, century after century, on the first, they would not treat this argument so lightly ; they sometimes allow themselves to do. It was, at an early period, spoken of as a sacred tradition from the Fathers ; and those early traditions in the *whole* Church do express the mind of the Apostles, who had the mind of Christ.' ¹

519. " Will you have the goodness to state to the Commissioners whether you consider that the marriage of persons in holy orders is prohibited by the law of God ?—I consider that it is, understanding by the law of God one which has been established by the Church from very early times, under the guidance of the Holy Spirit, and in accordance with Apostolic tradition.

520. " What was the earliest period in the Christian Church which notice was taken of this subject ? Witnesses.

i. In the Apostolic Canons, can. 25, it is enjoined, ' Of those who have been promoted to the clergy, being unmarried, order that lectors and choristers alone may marry according to their pleasure.' ² i. The Apostolic Canons.

521. " What is their date ?—I can only say that it is an ante-Nicene collection.

522. " Will you have the goodness to proceed with your statement of the views held upon this subject in the early Christian Church ?

ii. The Council of Eliberis [Elibera], a town of Andalusia, held according to Cardinal d'Aguirre in A. D. 303, according to Baronius and Labbe, in 305, as Mansi would have it, in 309,—thus ordains in its xxxiii. canon : ' It has seemed good to ordain that bishops, priests, and deacons, or all clerics ready in the ministry, should abstain from their wives and not generate children ; and whosoever should do otherwise, let him be excluded from the honour of the clerical body.' ³ ii. The Council of Eliberis.

Evidence, &c. Preface, iii.

³ Labbe, T. i. p. 29.

Labbe, T. i. p. 974. The Latin text seems to say exactly the contrary ; it is evidently corrupt. For, i. as Hefele remarks (Trad. Franç. T. i. 48), the identical phrase is repeated in the eightieth canon, where there can be no mistake about the meaning. ii. as Gabriel Albaspineus remarks in his notes on the Council, the collateral evidence of ancient decrees leaves no room for doubt. (See Labbe ad loc.) iii. as Hefele adds, the sense is made manifest by a parallel canon in the Council of Carthage, which will appear in

ii. Council
of Ancyra.

iii. In A.D. 314, a Council was held at Ancyra, metropolis of Galatia in Asia Minor. The Bishops of this synod were almost all present afterwards at the Ecumenical Council of Nicæa. The Acts were approved by Leo IV., and, as it would appear from the Council of Florence (act. 4) had been approved by the Fathers of Nicæa. The tenth canon (which has been inserted in the *Corpus Juris Canonici*) runs thus: 'Whatsoever deacons when they were ordained, and in the ordination itself, made protestation, saying that they wished to have wives and could not preserve continence, if they have married, may remain in the ministry, because the Bishop has given them permission' (an early instance of dispensation). 'But whoever have kept silence, and have received imposition of hands, if they should have married afterwards, must cease from their ministry and clerical office, receiving only lay communion.'¹

The wording of this canon shows most plainly that the general law of clerical celibacy had been already established; for it recognizes a dispensation, and dispensation supposes the law.

iv. Letter
of Pope
Siricius,
regulating
the Church
in Spain.

iv. Himerius, Bishop of Taraco in Spain, had written a letter to the then reigning Pope, S. Damasus, upon a variety of subjects connected with Ecclesiastical discipline. Damasus had died before the arrival of the letter, and Siricius, his successor, answered it. The letter was, therefore, most probably written in A.D. 385, the year that Siricius was elected Pope. In the seventh section, or *capitulum*, Siricius thus pronounces on the subject of clerical celibacy:

'Let us come now to the most sacred orders of clerics, which we find, by the indirect testimony of your Excellency, to have been trampled under foot and brought into confusion throughout your provinces, to the injury of holy religion; so that we must say in the words of Jeremias, 'Who shall give water to my head, and a fountain of tears to my eyes? and I will weep day and night for this people.' (Jer. ix. 1). If, therefore, the blessed

the text. (Ibid. p. 147, not. 2.) iv. The canon, almost in the same words, is found in the Acts of the Council of Worms, A.D. 868; (9th canon).—*Collectio Regia Maxima*, T. v. p. 739.

¹ Labbe, T. i. p. 1473.

Prophet says that he cannot find tears enough wherewith to weep for the sins of the people, how much must we grieve, when we are compelled to lament *the wickedness* of those who belong to our Body? Especially as,—to use the words of S. Paul,—on us rests that ‘daily instance, the solicitude for all the Churches. Who is weak, and I am not weak? Who is scandalized, and I am not on fire?’ (2 Cor. xi. 28, 29). (These words of the Pope do not sound like those of one who has only a Primacy of order). For we understand that many priests and Levites of Christ, a long time after their consecration, have generated children as well by their wives as by shameful concubinage; and defend *their crime* on the plea of prescriptive right, because in the Old Testament it is read that permission to generate children was given to priests and ministrants. Let him tell me now, whoever *this follower of his lusts and teacher of vices* may be, if he imagines that in the law of Moses the sacred Orders were in all cases allowed by the Lord to yield to their passions, why He admonishes at the outset those to whom the holiest things were intrusted, saying, ‘You shall be holy to Me, because I, the Lord, am holy’? (Levit. xxi. 8). Why also were the priests ordered to dwell in the Temple, far removed from their homes, in the year of their turn? It was for this reason, that they might not be able to have carnal intercourse with their wives; so that, radiant in the uprightness of their conscience, they might offer to God an acceptable offering. Moreover the use of marriage was allowed them at the expiration of the time of their ministrations, for the sake of succession only; because it had been enjoined that no one should be admitted to the ministry of God from any other tribe than that of Levi. Wherefore the Lord Jesus, when He illumined us at His coming, solemnly declares that ‘He came to fulfil, not to destroy.’ (S. Matt. v. 17). And therefore He has willed that the Church, whose Spouse is beautiful of form, should shine with the splendour of chastity, so that, at the day of judgment when He shall come again, He may find her ‘without spot or wrinkle,’ as He has declared by His Apostle; (Ephes. v. 27). And by the *indissoluble law of these sanctions*, all of us, who are priests and Levites, are bound; so that, from the day of our ordination, we subject

our hearts and bodies to sobriety and purity, in order to be entirely pleasing to our God in those Sacrifices which we daily offer. 'And they who are in the flesh,' as says the Vessel of election, 'cannot please God. But you are not in the flesh, but in the Spirit, if so be that the Spirit of God dwell in you'; (Rom. viii. 8, 9). And 'where could the Spirit of God dwell,' as we read, 'save in holy bodies'? (Wisdom i. 4).

'And, forasmuch as some few, of whom we are speaking, lament that they have fallen through ignorance, as your Holiness has stated, we decree that mercy is not to be denied them; on this condition, that without any further promotion, they remain in that office in which they now are, as long as they live, provided, however, that they should have striven to preserve continence afterwards. But those who rely on the excuse of an unlawful privilege by asserting that it is permitted to them in the old Law, let them know that they are deposed from all ecclesiastical dignity, which they have treated unworthily, *by the authority of the Apostolic See*, and that they can never handle the Venerable Mysteries, of which they have deprived themselves, *while they are agape after obscene desires*. And, forasmuch as the present instances forewarn us to be on our guard for the future, if any bishop, priest, and deacon whatsoever (which we hope may not be,) should be found henceforward in such condition, let him at once know that he is shut out from all hope of any indulgence at our hands; for it is necessary that wounds, which have not yielded to alleviating remedies, should be cut out by the knife.'¹

It is to be remarked that these chapters were issued by the Pope, not only for the government and direction of the Tarraconian Church, but also for those of Andalusia, Lusitania, and Gallicia.

. Council of
Carthage.

v. In A.D. 397 (alit. 390, Hefele, 387), a Council was convened in Carthage. In its second *capitulum*, continence is prescribed to priests and Levites. It is declared that such *was the teaching of the APOSTLES and the observance of antiquity* (quod Apostoli docuerunt, et ipsa servavit antiquitas); and

¹ Labb. T. ii. p. 1019. Ep. 1a. Siricio, n. 7.

it is furthermore decreed that all bishops, priests, and deacons should abstain from nuptial intercourse. (Omnibus placet ut episcopi, presbyteri, et diaconi, vel qui sacramenta contrecant, pudicitiae custodes, etiam ab uxoribus se custodiant.)¹

vi. A Council of Turin in A.D. 397 forbids that any cleric, who had had children since his ordination, should be promoted to a higher order.²

vi. Coun
of Turin

vii. A similar decree is embodied in the first *capitulum* of the first Council of Toledo, A. D. 400.³

vii. Fir
Council
Toledo.

viii. In the Codex Canonum Ecclesiae Africanæ, compiled in A.D. 419 from pre-existing sources, we find in the twenty-fifth canon (taken from the third *capitulum* of the fifth Council of Carthage, held in A. D. 398), that all bishops, priests, deacons, and subdeacons are required to abstain from intercourse with their wives, that they be as though they had them not. 'If they violate this statute, they must be deposed.'⁴

viii. Co
of Afric
Canons.

ix. Pope Innocent I., in the third year of his Pontificate, i.e. A.D. 404, wrote a letter to Victorius, Bishop of Rouen, in answer to a request made by the latter that the Apostolic See would give his Church a rule of Ecclesiastical discipline. In the ninth *capitulum* of this Decretal, the continence of even married priests and Levites is prescribed almost in the same words as Siricius had used before.⁵ And in his third letter to Exuperius, Bishop of Toulouse, Innocent expressly refers to, and confirms the Decretal, already quoted, of his predecessor. His opening words are too important to be omitted. It will be seen how this holy Pope in clear terms ascribes this prohibition of marriage, not to Ecclesiastical but to Divine law; just as his predecessor, Siricius, appeals to Leviticus and to S. Paul as his authority for enforcing this universal rule of the Primitive Church. These are the words I am alluding to: 'You have asked what must be done as regards those who, having been constituted in the ministry of the Diaconate or in the office of the Priesthood, have betrayed their present or past incontinence by the children that have been born to them. Concerning such, both the discipline

ix. Decr
letter o
Pope In
cent I.

¹ Labb. T. ii. p. 1159.

² Ibid. p. 1157.

³ Ibid. p. 1223.

⁴ Ibid. p. 1061.

⁵ Ibid. p. 1251.

of Bishop Siricius of blessed memory accord therewith; that persons constituted in such offices, if convicted of incontinency, should be deprived of all Ecclesiastical honour, and should not be permitted to approach to a ministry, which can rightly be fulfilled by continence alone.'

x. This answer of Innocent I. is quoted and adopted in the Council of Agatha, A. D. 506.¹

xi. There exists a very ancient Codex of Canons, communicated by the Roman Church to the Bishops of Gaul. It was first published by Sirmond, and its compilation is commonly assigned to the Pontificate of Innocent. In the third canon the celibacy of the clergy is enforced in these '*earnest, high-toned*,'² solemn words: 'In the first place, this has been decreed concerning clergy in the greater Orders (*sacerdotibus*),—concerning bishops, priests, and deacons, who are necessarily occupied in the Divine Sacrifices, by whose hands both the grace of baptism is conferred, and the Body of Christ is produced (*conficitur*), whom not we only, *but the Sacred Scripture also compels to be* most chaste; and the Fathers likewise have enjoined that they must observe chastity of body. And as regards this matter, let us not pass over the reason in silence, but let us declare it. For with what face (*quo enim pudore*) does a bishop or priest dare to preach chastity or continence to a widow or virgin, or persuade them to preserve their bed in purity, if he has applied himself to generate children to the world, rather than to God? Adam, who observed not the precept, was cast out of Paradise, and lost the empire; and think you that *the prevaricator*³ can attain to the kingdom of heaven? Wherefore Paul says, 'You are not in the flesh, but in the Spirit'; (Rom. viii. 9); and again: 'It remaineth, therefore, that they also who have wives, be as if they had none.' (1 Cor. vii. 29). . . . He is in Christ's service, who sits in the seat of a master, how is it that he is unable to observe the discipline of the service?

¹ Labb. T. iv. p. 1384.

² Evidence, &c. Preface, xlix.

³ A terrible term of reproach, not unfrequently applied in the ancient canons to those who had violated their vow of chastity or continence; e. g. Concil. Arausicanum I. (can. 28).

‘ As regards, therefore, these three degrees which we read of in the Scriptures, it has been ordered that purity is to be observed by the ministers of God, the duty of whose office is always pressing on them, (quibus necessitas semper in promptu est). For either baptism has to be administered, or Sacrifices are to be offered. *Shall one that is unclean dare to contaminate what is holy*, when whatever things are holy, are holy to the Holy? . . . Wherefore my duty is (negotium mihi est), against men of this sort *polluted and unfaithful*, in whom the sanctity of the body appears *to have been polluted by filthiness and incontinence*. I admonish, persuaded thereto by the very veneration due to religion, that the Mystery of God ought not to be intrusted to such men; for they are separated for a just reason. Let them of a truth listen, ‘Flesh and blood cannot possess the kingdom of God; neither shall corruption possess incorruption’; (1 Cor. xv. 50). And does a priest or deacon dare, *after the manner of beasts*, to become subject to (fleshly) striving?’¹

xii. In a letter written by S. Leo the Great to Anastasius, Bishop of Thessalonica, for the instruction and guidance of the Church in Asia Minor, occurs the following *capitulum*: ‘For although it is open to those who are outside the order of the clergy to be united in marriage, and to aim at the procreation of children; nevertheless, in order to exhibit the purity of a perfect chastity, carnal marriage is not permitted *even to subdeacons*, ‘that they also who have, may be as if they had none’; (1 Cor. vii. 29), and they who have not, remain single. But if it is fitting that this should be observed in this Order, which is fourth from the top, how much the more is it to be observed in the first, or second, or third, and that no one should be deemed meet for either the Levitical ministry (diaconate), or the priestly honour, or Episcopal eminence, who is convicted of not having as yet restrained himself from connubial pleasure?’²

xiii. In the first Council of Orange, convened A. D. 441, it is decreed, i. that married men are not to be ordained deacons, unless they make promise of chastity for the future, (can. 22);

xii. Decree letter of Pope S. Leo the Great to the Church of Thessalonica.

xiii. First Council of Orange.

¹ Labb. T. ii. p. 1318.

² Ibid. T. iii. p. 1835.

ii. that if, after his ordination, a deacon should have had intercourse with his wife, he was to be deposed from his office, (can. 23); iii. that if a deacon should have already done so before the promulgation of these decrees, he was to be treated according to the eighth canon of the Council of Turin, (A. D. 397); i. e. he was not to be promoted to any higher order in the ministry, (can. 24).¹ S. Hilary, Bishop of Arles, was present at this Synod.

xiv. Ecumenical Council (4th) of Chalcedon.

xiv. The Council of Chalcedon evidently treats the celibacy of the clergy as an universally understood and acknowledged law. For in its 15th Action, can. 14, it is written, "Since in some provinces it has been permitted to Lectors and Cantors to marry," &c., evidently showing that, even as regards the minor orders, marriage was only permitted partially and, as it were, by dispensation.²

xv. Second Council of Arles.

xv. In the second Council of Arles, A. D. 452, a year, therefore, after the Ecumenical Council of Chalcedon, it is forbidden, by the second canon, to ordain a married man to the priesthood, unless he should have promised to abstain thenceforward from all nuptial intercourse.³

xvi. First Council of Tours.

xvi. In the first Council of Tours, A. D. 461, the celibacy of priests and Levites is enforced by the same arguments as those which I have already presented to the Commissioners from the *Canones Romanorum*; while in the second canon a mitigation is made in the severity of the earlier discipline, as touching this matter. For 'it had been decreed by our Fathers' (a Patribus nostris constitutum) that whatsoever priest or Levite should be convicted of having had carnal intercourse with his wife, should be deprived of communion. The Fathers of Tours permitted them communion; but forbade their elevation to a higher order, and also forbade them to offer sacrifice to God, or to perform their ministry among the people.⁴

All these included within the first stage of Church history, according to Dr. Pusey's division.

I would call the attention of the Commissioners to the fact, that these fifteen witnesses are included in that first stage of Church History which the Regius Professor of Hebrew at Oxford had commemorated in his published evidence before another Royal Commission in 1848, concerning prohibited

¹ Labb. T. iii. pp. 1449, 1450.

² Ibid. p. 1011.

³ Ibid. T. iv. p. 783.

⁴ Ibid. pp. 1050-51.

degrees of affinity. I will add a few witnesses, taken at random, from Councils, &c., occurring in his second stage, i. e. from the commencement of the sixth century.

xvii. In a Council of Grenada in Spain, A.D. 517, it is decreed, in the sixth canon, that if any of the clergy, from bishop down to subdeacon, should have been married men, they must, after receiving orders, abstain from living with their wives.

xvii. Coun-
cil of Grenada.

xviii. In the Council of Clermont, A.D. 535, we find the thirteenth canon to enjoin as follows: 'Since priests and deacons are elevated to a lofty pinnacle of dignity, let them entirely renounce the actions of the world, and being elected to the sacred ministry, let them repudiate carnal connection, and exchange the cohabitation of former intercourse for brotherly affection; and whosoever he is being priest or deacon, having received by Divine gift the benediction, let him straightway become the brother of her who was once his wife, in place of husband. But we have found that there are some, *inflamed with the fire of lust*, who, having thrown off the girdle of service, *have returned to their old vomit*, and have sought again after forbidden married intercourse, and have violated the shining honour of the priesthood by the crime, as it were, of incest, as has been made manifest by the birth even of children. If any one is convicted of having done this, he shall be deprived for ever of all dignity, which he has lost *ipso facto* by the allowing of the crime.'

xviii. Coun-
cil of Clermont.

523. "Was this the Council cited by Dr. Pusey in his evidence before the Commissioners in 1848?—Yes, the same; and the canon I have just quoted follows next to the one which he then produced.

524. "Proceed, if you please, with your statement concerning the opinion of the early Christian Church on this matter of clerical celibacy?

xix. Among the decrees of Pope Gregory the Great, promulgated towards the close of the sixth century, is found the following, which is the second in order:

xix. Decree
of Pope
Gregory
Great.

'If any priest or deacon should marry, let him be anathema.'

¹ Labb. T. iv. p. 1805.

² Ibid. T. v. p. 1583.

x The
gth Coun-
f of Toledo.

xx. The eighth Council of Toledo was held in A. D. 653. In its fourth *capitulum* it enforces on bishops, under pain of degradation, the observance of perfect chastity. The fifth *capitulum* I will quote at length. 'At the instigation of the fifth action (of the Council) it has reached the ears of the whole Council, that certain priests and ministrants, forgetful of the ancient constitutions of our predecessors, *have been defiled by the unclean intercourse and execrable infection either of wives or of women of whatever kind, with obstinacy of a most evil heart going against the Sacred Scriptures as well as the regulations of the Fathers, (obliviscentes majorum veteribus constitutis, aut uxorum aut quarumcunque foeminarum immunda societate et execrabili contagione turpari, pessimi cordis obstinatione, tam Sacris Literis quam Patrum regulis obviantes).* . . . By reason of this *disgraceful wickedness* (flagitii dedecus), it is especially defined by the Sacred Council, that all the Bishops are to take care sedulously to find out this same thing among their own (clergy); and whenever they have been able, with all certainty of truth, to discover it, that they bind all by such warning of our decree as that they never more commit what is *so abominable*. And let the women, whether free or bondslaves, associated with them *in wickedness*, be entirely separated from them, and be sent to a monastery; so that, for the future, they may be shut out from any possible way of returning to their companions in guilt. And as regards themselves, (*i. e.* priests and ministrants), if they should utterly refuse to be restrained, let them be sent to a monastery, and remain even till the end of their life wholly subjected to the discipline of penance.'¹

Discipline of
the Anglo-
Saxon
Church in
this respect.

525. "Have you any reason to suppose, that the same view of clerical celibacy was maintained in the Anglo-Saxon Church during this second stage of Ecclesiastical History, to which you have referred?—Yes; there can be no reasonable doubt about the fact. But as I do not wish needlessly to occupy the time of the Commissioners, I will briefly set before them a statement upon this subject borrowed from Dr. Lingard, whose authority on all matters connected with English History is

¹ Labb. T. vi. p. 405. See also the 6th and 7th capitula.

justly held in equal estimation by all, whatever may be the religious opinions they profess. The original sources of his information he supplies in the foot-notes.

In his 'History and Antiquities of the Anglo-Saxon Church,' he supplies us with an answer to the question you have just proposed. 'Of the discipline,' he writes, 'established by the Roman missionaries,' (*i.e.* S. Augustine and his companions) 'every doubt must be removed by the answer of S. Gregory to S. Augustine; according to which only the clerks who had not been raised to the higher Orders, and who professed themselves unable to lead a life of continency, were permitted to marry'; (see V. Bedæ Hist. Eccl. l. i. c. 27; pp. V. Bedæ, ed. Giles, v. ii. p. 109. Londini, 1843;) 'and the consentient practice of the northern Saxons is forcibly expressed by Ceolfrid, the learned Abbot of Wearmouth, by Beda in different passages of his writings, and by Egbert, the celebrated Archbishop of York, in his Excerpta. In many of the canons, which are acknowledged to have been observed by their successors, the same is either evidently supposed, or openly commanded. The sentence of degradation is pronounced against the priest or deacon who shall presume to marry; and the ecclesiastic who had separated from his wife to receive the sacred rite of ordination, and had returned to her again, was condemned to a penitential course of ten or seven years. . . . During more than two hundred and fifty years from the death of Augustine, these laws respecting clerical celibacy, so galling to the natural propensities of man, but so calculated to enforce an elevated idea of the sanctity which became the priesthood, were enforced with the greatest rigour; but during part of the ninth, and most of the tenth century, when the repeated and sanguinary devastations of the Danes threatened the destruction of the hierarchy, no less than of the government, the ancient canons opposed but a feeble barrier to the impulse of the passions; and of the clergy who escaped the swords of the invaders, several scrupled not to violate the chastity which at their ordination they had vowed to observe. Yet even then the marriage of priests was never approved by the Saxon prelates; and as often as a transient gleam of tranquillity invited them to turn their

Dr Lingard's
summary of
evidence on
this subject.

Severe law of Edmund against clerics who violated their vow of celibacy.

attention to the restoration of discipline, the prohibitions of former Synods were revived, and the celibacy of the clergy was recommended by paternal exhortations, and enforced with the severest penalties.' (Note.—'By the laws of Edmund (an. 943) the punishment ordered by the canons was enforced, that all offenders, who had vowed chastity by their Orders, should forfeit their property, and the right of Christian burial, unless they did penance before death.')

¹

Prominently included in S. Dunstan's reform.

Towards the close of the tenth century the strict enforcement of clerical celibacy was one of the principal features in the reform of S. Dunstan, Archbishop of Canterbury, under the reign of Edgar; and it was embodied in a general English Council, convened by his authority.* During the reign of Canute, whose death was separated from the accession of S. Edward the Confessor only by an interval of seven years (A.D. 1035 to 1042), 'the ancient canons were also renewed, detailing and enforcing the numerous duties of the parochial clergy; and it was again declared that the practice of chastity was of indispensable obligation to canons, priests, deacons, monks, and nuns.'

²

By parity of reasoning, the law of clerical celibacy forms part of the natural and Divine law. i. Appeals to Scripture.

526. "Do you understand the Councils which you have quoted to mean, that the celibacy of the clergy forms part of the Divine law?—Yes, I should most decidedly say that these Councils rested upon the Divine command in enforcing the celibacy of the clergy. You will have noticed that the Pope Siricius appealed to the general law in Leviticus with respect to the priests of the old Law, '*You shall be holy to me; because I, the Lord, am holy,*' which, he takes care to inform us, was not done away in Christ, as the ceremonial and judicial precepts undoubtedly were, but was fulfilled by Christ's command. Any extension of it to the minor orders was left to the Church at the time; but the general principle was binding upon the Christian priesthood, and as regards bishops, priests, and deacons, the particular prohibition of marriage was included by implication under the general principle. Besides, the same Pope quotes our Lord's words, and those of S. Paul;

¹ Lingard's History and Antiquities of the Anglo-Saxon Church, chapter iv. v. i. p. 177.

² Ibid. ch. xiii. v. ii. p. 289.

³ Ibid. ch. xiii. p. 324. London, 1845.

and adds that bishops, priests, and deacons are bound by 'the indissoluble law of these sanctions'; so that it would appear as though dispensation were excluded by virtue of the Divine command. The Council of Carthage in A.D. 397 asserts it to be 'the teaching of the Apostles.' Pope Innocent I. speaks of it as 'the discipline of the Divine laws.' The Codex Canonum of the Roman Church is yet plainer; for it openly affirms that 'the Sacred Scripture compels us to be most chaste.' The eighth Council of Toledo warns the clergy not to 'go against the Sacred Scriptures'; and almost all refer to the Scriptures as being the foundation of the prohibition. Therefore 'I would say more explicitly that it is impossible to adduce any principle either of Holy Scripture or of regenerate nature, whereby marriage with a deceased wife's sister may be accounted to be prohibited, and the marriage of the clergy be allowed.'¹

527. "Have you anything further to add with respect to the marriage of the clergy being prohibited by the Divine and natural law?—Yes; I would call the especial attention of the Commissioners to the 'exceedingly strong'² language of these canons, in denouncing the marriage of persons in holy orders. Some of the expressions are the same as, some much more terrible than any used by S. Basil, when he speaks of marriage with a deceased wife's sister. Thus they are called *prevaricators*, a term often employed with regard to incontinent clergymen who have violated the vow of chastity made at their ordination. It is applied in Holy Scripture to the most horrible crimes. Thus in Jeremiah ix. 2, it is said of adulterers, 'Because they are all adulterers, an assembly of *transgressors* (*prevaricatorum*'). In Osee vii. 13, a special woe is pronounced on them. It includes every kind of grievous sin; 'Prævaricantes reputavi omnes peccatores terræ'; (Psalm cxviii. 119). Then it is to be observed that the Councils speak of the prohibition as 'the indissoluble law of these sanctions,' which is quite equivalent to what S. Basil calls *θεσμοίς*, 'sacred laws,'³ Besides the marriage of priests is called by

ii. From unusual strong language used by the Councils, &c.

¹ See Evidence, &c. Preface, pp. xx. xxi.

² Ibid. n. 445. p. 11.

³ The word *θεσμοί* is used in this sense by Pindar, Isth. viii. 33. It also seems to imply a severe, as distinguished from a mild law. For the laws of

Pope Siricius, *wickednesses, crime*, "which is the same expression nearly as that of Holy Scripture, זָמָה; and the same Father calls the priest or Levite who thus sins, 'a follower of lusts and teacher of vices,' as one 'agape after obscene desires'; and the Roman Codex speaks of his acting 'after the manner of beasts,' which describes a sin very like the תָּבַל of Leviticus. The eighth Council of Toledo describes the marriage of clerics as 'unclean intercourse and execrable infection,' and the Roman Codex speaks of those who commit it as 'unclean, contaminating what is holy, polluted, and unfaithful,' and the eighth Council of Toledo, as 'abominable,' which corresponds to the dreadful word in Holy Scripture, used to express filthiness of sin, and abomination, נִדָּה. Further, this last-named Council speaks of the sin as being 'disgraceful wickedness'; which is exactly like that word so often occurring in the Old Testament, תּוֹעֵבָה. The Council of Clermont speaks of such priests as being 'inflamed with the fire of lust—having returned to their old vomit'; and actually describes their marriage as 'the sin of incest.' It is not easy to understand how any one that does not will to be blinded, can suppose a statute, so spoken of by successive Councils of the Primitive Church, to be a merely Ecclesias-

Draco were called *θεσμοί*; while those of Solon were called *νόμοι*. Some say, however, that this was because Draco's laws began with that word. (See Donnegan, Liddell and Scott). This opinion is specially defended by Scott; but '*Scotus and certain followers of his are an unsatisfactory school.*' The former sense is found in Andoc. 11. 19. 26. All. v. H. 8. 10. From this word is derived ἀθεσμβόλετρος, in a state of illegal marriage. Lycophr. 1142. The Latin word *lex* is used in the same way: Fin. 4. 22. 61. So '*sine lege*' means without restraint; id. Am. 3. 20. 20. Hence the word *illex*, lawless (Pl. Plant. Pers. 3. 3. 4), which is the same as *illicitum*; (for *lex* is quasi *licet*),—an expression much used in these canons. (See Smith's and Riddle's Latin Dict. ad v.) These words, *lex*, *illicitum*, will be often found with this meaning in the Jus Ecclesiasticum of Van Espen; e. g. P. i. tit. xxxiii. de quasi Reg. n. 18. P. ii. tit. viii. de Sac. Ex. Unct. n. 28. So Suarez de Legg. L. i. c. 5. n. 2. L. iv. c. 5. n. 4. So Aquinas, 1. 2. d. vi. a. 4. &c. See also *jus* and *jurisdictio*, and the remarks of Ducange in his Glossarium mediæ et infimæ Lat. ad v. There is a similar application of these words in the Council of Latrocinium, (sometimes called of Ephesus) in A. 431, at which Nestorius, Patriarch of Constantinople, presided; a council 'acknowledged throughout. [For this note the learned professor of Ecclesiastical History is not responsible; it will be inserted by the Editor of his evidence.]

tical or positive law, and not to form part of the natural and Divine Law, which is immutable.

528. "Is there anything further that strikes you as bearing upon this point, as to the Divine origin and moral nature of this precept?—Yes; I would call the special attention of the Commissioners to the severity of the punishment inflicted on those who committed this heinous crime. The Council of Eliberis orders them to be expelled from the clerical order; Pope Siricius gives no hope of indulgence, and says that the moral disease must be cut with the knife. In the Canons of the African Church they are ordered to be deposed. Pope Innocent orders their degradation. According to the first Council of Tours, in A. D. 461, the ancient discipline ordered their excommunication. The Council of Clermont sentences them to perpetual deprivation. Pope Gregory the Great anathematizes them. The Council of Clermont orders that if they persist in the sin, they are to be sent to do penance in a monastery for the term of their natural life. In the ancient Anglo-Saxon canons, sentence of degradation was passed upon them; and by the law of Edmund their property was seized, and, unless they repented before death, they were deprived of Christian burial.

iii. From the severity of penances imposed.

529. "Is there anything that you would wish to add to your evidence?—I hardly know whether it is the right occasion for doing so; but I wish to express to the Commissioners my astonishment, that a law derived from the Divine authority and Apostolic tradition,—rigorously observed by the Primitive Church from the earliest times,—enforced with such tremendous sanctions,—insisted upon by those Ecumenical Councils of the first centuries, and by those Fathers that are so highly commended in the Anglican symbolical books, should have been rejected, ever since its establishment by that 'Church of England' which appeals to the Primitive Church, and professes to have restored it, freed from the modern superstitions of Popery, to its pristine purity."

Expression of the Professor's private opinion.

Here our extracts from the Report were brought to a summary close. But the same permission which set before our eyes this future document, allowed us to be present at the

The future Cabinet Council.

future deliberations of the Cabinet Council which is to take this report into its consideration.

The discussion was warm. The future Prime Minister was strongly in favour of the enforcement of clerical celibacy for the future in the English Church, making due provision for vested interests ; as he deemed that a case of very glaring inconsistency had been established. This seemed to be the prevailing opinion at first ; but it met with strenuous opposition from two important members of the Cabinet. The Lord Chancellor said he had received information from the Bishops, that candidates for orders were falling off in number and quality ; and he urged that the measure proposed would still further augment the evil. The Secretary for the Home department opposed it on two grounds. One of these was, that a married clergy was always more submissive to the constituted authority of the State, and less likely to take up with extreme notions of Church independence ; the other was a prudential reason. For he feared that the result of such a measure would be greatly to diminish that female co-operation in Sunday-schools, choirs, Dorcas and other charitable societies, which formed so important an element in our present parochial system.

CHAPTER III.

IS THIS JUDGMENT OF THE CHURCH, "THAT LEVITICUS XVIII. IS PART OF THE MORAL LAW AND UNCHANGEABLE," TO BE DISCOVERED IN THOSE FATHERS WHOM DR. PUSEY HAS QUOTED?

WE had occasion, in the course of our prefatory remarks in the preceding chapter on the study of Patrology, to call the attention of our readers to the plan, or method, adopted by Christ our Lord, in consigning that Divine Deposit, which contained the whole Christian Revelation, to His Apostles, and, in due order, to His Church.

Introductory.

It is too plain to require any labour of proof, that the Apostles themselves were only by degrees instructed in the whole mystery of the Faith. For they were taught, as we know, partly by our Blessed Lord himself, partly by the illumination of the Holy Ghost; though, when once that Divine instruction had been completed, they were filled with an explicit knowledge of all the mysteries of the Christian Creed,—an opinion so theologically certain, that it would be culpably rash to entertain, or advance any theory incompatible with its truth.

But not so was the Sacred Deposit given by the Apostles into the Church's keeping. While all the principal, and, as we may say, most necessary truths of the Gospel were from the first explicitly revealed to Her, there was a multitude of other doctrines, only implicitly contained in the Deposit, which, in the ordering of God's good providence, were, one by one, to be evolved in the course of Her history, according to the exigences of the time; so that She might grow in reality, as Her Divine Head, by a wondrous economy of humility, *seemed* to grow, "in wisdom before God and men." (S. Luke ii. 52). Thus was it arranged that the Divine ideas, super-

The development of doctrine in the Church of Christ.

naturally sown in their substantial unity by Himself, should grow in His bright field of grace, after the outward manner of other human ideas, evolved into their perfect proportion by process of reason; but with this intrinsic and essential difference, that in the new Eden the seed was Divine, the sowing Divine, the watering Divine, the increase Divine, and the growth from first to last guarded by His infallible Wisdom who is the Spirit of Truth.

One of the instruments Divinely appointed; conflict of opinion in the Christian schools.

One of the most powerful means, by which this development of dogma was destined to be effected, was common to it with the evolution of other truths in the natural order. We allude to the conflict of opinion. Not long after the infant Church had gained her last wrestling-match with the old Pagan giant in the Roman amphitheatre, and the Cross of Christ had cast its guardian shadow over the world's metropolis, the Catholic schools became the great crucible in which Theological opinions were smelted, and the true ore of revealed truth separated from the dross of mere human speculation; we must add, out of historic justice, that they often supplied likewise the heat required for the fusion. Sometimes the rise of a new heresy, sometimes the teaching of a celebrated doctor, sometimes an incident apparently accidental, would awaken the question. Opposing schools would take it up, maintaining opposite opinions about it. The war would gradually wax fiercer and fiercer; and the tiny heaven-born plant of Faith would be seen, little by little, lifting its head above the ground, and growing into bud. The Apostolic See, with its accustomed perspicacity of vision, at length catches sight of the new growth, and judges it is time to intervene and impose restrictions on the maintenance of opinions adverse to its full liberty of growth. The busy years roll on; and at last the tender bud bursts forth into full flower, embosoming the richest sweets, under the bright sunshine of a dogmatic definition pronounced from the infallible chair of the Prince of the Apostles.

Hence, individual Fathers and Doctors have erred on points of doctrine not as yet defined in their time.

Such being the process of dogmatic development, it need cause us no surprise to find, in the course of our Patristic researches or our study of Scholastic Theology, that individual Fathers and Doctors of the School have from time to time either broached opinions, on matters connected with revealed

truth, which in the event have been authoritatively pronounced to be erroneous, or that they should have spoken in a loose, ambiguous, doubtful way about doctrines whose explicit definition was reserved, according to God's good pleasure, for an aftertime.

We are perpetually, in fact, coming across such instances in the course of theological study; indeed, they supply the greater number of difficulties which encompass the several articles of our creed, and require solution at the hands of a Professor. Is there any one, for instance, that has made the first step in his study of Patrology, who is ignorant of the grave discussions excited concerning the orthodoxy of the ante-Nicene Fathers on the subject of the Blessed Trinity, by reason of the obscurity and inaccuracy of their theological phraseology;—discussions so grave, that Petavius unjustly, as it seems to us, abandons for the most part their defence, and seems to coincide in the charge of heterodoxy that has been advanced against them by their severer critics? Again; on the rise of the Pelagian heresy, the mainstay of its advocates was the supposed authority of the Greek Fathers, more particularly that of S. Chrysostom. Their principal Theologian, Julian, was too acute a disputant not to take advantage of their writings, in order to prop up the fabric of error that was falling piecemeal beneath the iron blows of S. Augustine. So he obtrudes the pages of the saintly Patriarch of Constantinople before the eyes of the Doctor of grace; and with an air of triumph inquires how it was that S. Chrysostom did not speak as his adversary had done, on the doctrine of original sin. And what says S. Austin in reply? "Because," he writes, "as he was discoursing in the Catholic Church, he deemed that he could not be otherwise understood. No one had raised such a question, so as to strike the right chord; since you had not yet begun with your special pleadings, he was more unguarded in what he said."¹

Ante-Nicene
statements
concerning
the Blessed
Trinity.

S. Chrysos-
tom, on
original sin

The same apology which the Bishop of Hippo made for S. Chrysostom, in the matter of the Pelagian heresy, may in

S. Augus-
tine's state-
ments ab-

¹ "Quia disputans in Catholica Ecclesia, non se aliter intelligi arbitrabatur; tali quæstione nullius pulsabatur; vobis nondum litigantibus, securius loquebatur."—*Contra Julianum*, L. i. n. 22.

xx The eighth Council of Toledo.

xx. The eighth Council of Toledo was held in A. D. 653. In its fourth *capitulum* it enforces on bishops, under pain of degradation, the observance of perfect chastity. The fifth *capitulum* I will quote at length. 'At the instigation of the fifth action (of the Council) it has reached the ears of the whole Council, that certain priests and ministrants, forgetful of the ancient constitutions of our predecessors, *have been defiled by the unclean intercourse and execrable infection either of wives or of women of whatever kind, with obstinacy of a most evil heart going against the Sacred Scriptures as well as the regulations of the Fathers, (obliviscentes majorum veteribus constitutis, aut uxorum aut quarumcunque fœminarum immunda societate et execrabili contagione turpari, pessimi cordis obstinatione, tam Sacris Literis quam Patrum regulis obviantes).* . . . By reason of this *disgraceful wickedness* (flagitii dedecus), it is especially defined by the Sacred Council, that all the Bishops are to take care sedulously to find out this same thing among their own (clergy); and whenever they have been able, with all certainty of truth, to discover it, that they bind all by such warning of our decree as that they never more commit what is *so abominable*. And let the women, whether free or bondslaves, associated with them *in wickedness*, be entirely separated from them, and be sent to a monastery; so that, for the future, they may be shut out from any possible way of returning to their companions in guilt. And as regards themselves, (*i. e.* priests and ministrants), if they should utterly refuse to be restrained, let them be sent to a monastery, and remain even till the end of their life wholly subjected to the discipline of penance.'¹

Discipline of the Anglo-Saxon Church in this respect.

525. "Have you any reason to suppose, that the same view of clerical celibacy was maintained in the Anglo-Saxon Church during this second stage of Ecclesiastical History, to which you have referred?—Yes; there can be no reasonable doubt about the fact. But as I do not wish needlessly to occupy the time of the Commissioners, I will briefly set before them a statement upon this subject borrowed from Dr. Lingard, whose authority on all matters connected with English History is

¹ Labb. T. vi. p. 405. See also the 6th and 7th capitula.

justly held in equal estimation by all, whatever may be the religious opinions they profess. The original sources of his information he supplies in the foot-notes.

In his 'History and Antiquities of the Anglo-Saxon Church,' he supplies us with an answer to the question you have just proposed. 'Of the discipline,' he writes, 'established by the Roman missionaries,' (*i.e.* S. Augustine and his companions) 'every doubt must be removed by the answer of S. Gregory to S. Augustine; according to which only the clerks who had not been raised to the higher Orders, and who professed themselves unable to lead a life of continency, were permitted to marry'; (see V. Bedæ Hist. Eccl. l. i. c. 27; Opp. V. Bedæ, ed. Giles, v. ii. p. 109. Londini, 1843;) 'and the consentient practice of the northern Saxons is forcibly expressed by Ceolfred, the learned Abbot of Wearmouth, by Beda in different passages of his writings, and by Egbert, the celebrated Archbishop of York, in his Excerpta. In many of the canons, which are acknowledged to have been observed by their successors, the same is either evidently supposed, or openly commanded. The sentence of degradation is pronounced against the priest or deacon who shall presume to marry; and the ecclesiastic who had separated from his wife to receive the sacred rite of ordination, and had returned to her again, was condemned to a penitential course of ten or seven years. . . . During more than two hundred and fifty years from the death of Augustine, these laws respecting clerical celibacy, so galling to the natural propensities of man, but so calculated to enforce an elevated idea of the sanctity which became the priesthood, were enforced with the greatest rigour; but during part of the ninth, and most of the tenth century, when the repeated and sanguinary devastations of the Danes threatened the destruction of the hierarchy, no less than of the government, the ancient canons opposed but a feeble barrier to the impulse of the passions; and of the clergy who escaped the swords of the invaders, several scrupled not to violate the chastity which at their ordination they had vowed to observe. Yet even then the marriage of priests was never approved by the Saxon prelates; and as often as a transient gleam of tranquillity invited them to turn their

Dr Lingard's
summary of
evidence on
this subject.

long time after this is found defending the traducian theory.¹ Yet from the first rise of the school it was rejected by its great Doctors; and S. Thomas does not hesitate to brand it with the mark of heresy.² The universal sense of the Church eventually rejected it; and the opposite theory of immediate creation by God was sanctioned 3rd December, 1661, by a constitution of Alexander VII.³

So ended this famous controversy.

The dogma
of the Im-
maculate
Conception.

We will produce one other, and that a most striking instance. Any of our readers who are at all conversant with the history of dogma, will have probably anticipated our choice, concluding with justice that it would be impossible for us to ignore the once celebrated, now happily buried controversy, concerning the Immaculate Conception of the Blessed Mother of God. If we are to trust to Petavius, this great doctrine of the Creed was not generally recognized by the Fathers of the Primitive Church. For he says, "It does not seem to have been received in former times as a dogma of faith, since most of the holy Fathers,—and they otherwise most devout to the Blessed Virgin,—have sometimes written about it with hardly sufficient propriety, influenced by the most trivial reasons, nay, by no reasons at all." And he quotes as instances SS. Basil, Chrysostom, Cyril of Alexandria, Proclus, and even S. Anselm in the eleventh century.⁴

Scarcely had the school arisen, than this great question became the battle-field of contending Theologians. The last brilliant name in the catalogue of Fathers was claimed by the opponents of the doctrine. The Angel of the Schools was generally supposed to have followed in the footsteps of S. Bernard; which he undoubtedly did, though not in the sense understood by those who then quoted his authority. That world-renowned and most learned Order, which S. Thomas had illustrated by his incomparable genius, clustered round these two great names; while the Franciscan Scotus, only second to his Dominican predecessor, with the family of

¹ Cont. Monophys. orat. 4a. in nova collectione Maii, T. vii. p. 197.

² 1a. cxviii. 2. in c.

³ "Sollicitudo omnium Ecclesiarum." See note in chap. v. of this part of our work.

⁴ De In- ione, L. xiv. c. 1. 3.

Brothers Minor, gathered to the standard of the Immaculate Queen. Long and fierce was the controversy; and towards the close, the sons of S. Ignatius came to the aid of the already more than half-victorious Scotists, very much like the Prussians at the battle of Waterloo. For in 1483 Sixtus IV. had published a Bull, condemning those who asserted that it was a mortal sin to hold or teach the doctrine, or to say the office of the Immaculate Conception, proscribing their books, excommunicating the offenders, and making such conduct a reserved case. This Bull was confirmed by the eighteenth Ecumenical Council, viz. that of Trent; and the name of our Lady was excepted in the decree touching the doctrine of original sin.¹ Time went on. The liberty of discussion was more and more restricted by successive Popes; till at length all wars had ceased; and the Empire of the faithful was lapped in a universal peace. And now arises in Her brightness the Queen of the Immaculate Conception, with Her crown of twelve stars, clothed with the light of the sun, having the moon under Her feet, trampling with the tread of Her supercelestial innocence on the head of the old serpent, while She gathers Her Blessed Son's rejoicing brotherhood under the wide folds of Her royal raiment, "all glorious within."

In such a way as this, then, it is that, through the centuries of the new Dispensation, a magnificent Temple has been in course of gradual construction as a shrine for Emmanuel. And it has no need of a lamp, nor the light of the sun; for the Lord God is its Light. Striking is the contrast between it and that temple of an older time, builded by Divine command upon Mount Moria. For of this latter it is written, "The house when it was building, was built of stones hewed and made ready; so that there was neither hammer, nor axe, nor any tool of iron heard in the house, when it was in building." (3 Kings vi. 7). But with the structure of Catholic dogma it was not, and it is not so. Its adamantine blocks are hewn and carved to need, amid sound of axe, and hammer, and instruments of iron; and its walls are slowly reared by workmen clothed in panoply of war. But the Temple of Jerusalem

¹ Sess. v. can. 5.

was soon completed, oftentimes polluted, and finally destroyed. The new Temple of faith shall be completed only with the completion of time. The infallible voice, which regulates its construction, preserves it from pollution through the course of ages; and it is as indestructible as He, by whose Wisdom it has been designed. It is even now, though incomplete, the world's wonder, with its clustering columns, its many aisles, its Sanctuary of Light, its "storied windows richly dight" with mingling colours of Fathers, Doctors, Councils, Popes; while in its sacristy lie treasured the rich vestments of Liturgy and Ritual. "The beautiful," says the Angelic Doctor, "consists in due proportion"¹—in a unity of order in the midst of multiplicity. And if this be beauty, the Church's Theology is *indeed* beautiful.

In certain questions of dogma which were developed later, Fathers or Schoolmen, who preceded the definition, are not the safest guides.

But, to return to the main purpose of these general prefatory reflections. It follows from this gradual and scientific evolution of dogma, as a necessary consequence, that, on questions of faith or morals which have grown into form and explicit knowledge in later centuries, the writings whether of Fathers or of Schoolmen who flourished earlier, would not be the safest or best guides for those who are bent on the study of those particular questions. Such authorities are of value chiefly as expressions, more or less definite, of the mind of the Church; and they could not be expected to fill this office, before the mind of the Church had discovered itself on the particular subject under consideration, whatever that might be. As we should be unwise to trust, in the formation of our judgment touching the respective merits of the two theories concerning the origin of the soul, to the Fathers of the first six centuries; so as regards the dogma of the Immaculate Conception we should pursue a dangerous path, were we to yield ourselves unreservedly to the teaching of the medieval schools. And in like manner, on questions of canon law, such as the one on which we are at present engaged, we must be even with the time; and not expect from a Father of the fourth or fifth century that exact information about Ecclesiastical statutes which is the special province of a Jurist, or oppose

¹ 1æ. v. 4. ad 1m.

the *obiter dicta* of an ante-Tridentine Doctor, however eminent he may be, to more recent developments of the Church's moral Theology. God has given to His Church a living Voice of authority for all time; and if once, in our presumption and the self-will of spiritual pride, we turn a deaf ear to that Voice,—if we *will* cling to the exercise of our private judgment on such matters, under the shallow pretext, after that example of heretics from the Apostolic age down to the present day, of reverence to the dumb monuments of Christian antiquity, we shall infallibly miss all the real advantages to be derived from their invaluable records. They will be to us a stenography of which we have not the key, and we shall only, alas! ensure for ourselves a place in the catalogue of those who "*have erred from the way of truth,*" upon whom "*the sun of understanding hath not risen*" (Wisdom v. 6); and who "*professing themselves to be wise, have become fools.*" (Rom. i. 22).

Intimately connected with this same subject, and, as it were, springing out of it, is a hermeneutic canon to which, by reason of its practical bearing on the inquiry we are about to institute, we beg leave to call the reader's special attention. In our search after truth amid the miscellaneous documents of Patrology, it behoves us to discriminate with no ordinary care, and, discriminating, to index the intrinsic nature and characteristics of the various remains which we chance to come across in the works of the Fathers, as we study them one by one. They have not all an equal value; and we should consequently be very foolish, if we claimed for all an equal authority. Dogmatic treatises and, in their measure, controversial works, can be more safely trusted than popular expositions of Scripture; commentaries on Scripture, again, are more trustworthy than sermons. But of all Patristic records, letters or epistles, as a general rule, (for there are exceptions), are the unsafest guides. We say that there are exceptions. For the latter may be a dogmatic answer to a theological inquiry; and then its authority is equivalent to a dogmatic treatise. But, for the most part, letters are not intended for the public eye. They are the momentary effusions of familiar intercourse, are supposed to be private, and only

In using writings of Fathers & Schoolmen as our guides, we need of discrimination the nature of the document; whether a treatise, sermon, or letter.

escape into the pages of literature by accident. Common experience tells us, that men are wont to use a strength and fervour of expression in friendly correspondence, which their friends' knowledge of them safely deciphers, but to which they themselves would be loth to give an *imprimatur*. If, under peculiar circumstances, the student of such epistolary literature is able to extract any material suited to the special object of his labour; yet, even in this case, he will carefully avoid,—if he is wise and even-minded,—any inferences gathered from exuberant epithets, strength of expression, or sharpness of invective. For it is precisely in such ways that a letter-writer finds a confidential outlet for the pent-up excitement of feeling which may have mastered him for the moment. To do otherwise might suit the unenviable trade of a special pleader, but is utterly inconsistent with the intellectual breadth and impartial temper of a philosopher or Theologian.

Dr. Pusey's
not great
itances,
S. Basil.

And now we must, however unwillingly, descend once more to the arena of controversy. For Dr. Pusey has not yet emptied his quiver. If the Councils of the Church in the early centuries will not serve his turn, or afford any justification for the ambitious wording of his title-page,—if they fail yet more signally in giving the least perceptible confirmation to his assertion that “It was the deliberate judgment of the Church” (we conclude from other sources, “*for fifteen centuries*”) “that Levit. xviii. is part of the moral law and unchangeable,” he has at least one Father in store for us, whose evidence is, in his judgment, conclusive. This is his *grand pièce de résistance*. To that evidence he returns again and again; and he dandles it before the eye of his readers with the fond affection of a mother for her only-begotten. We meet S. Basil in the Preface, S. Basil in the Evidence, S. Basil in the pamphlet. He is the most obliging of witnesses; for he may be said to take nearly all the duty for the Eastern and Western Churches. Yet it is somewhat hard, that one solitary Father should have to bear the burden of standing proxy for the Primitive Church. But then it is just possible that his testimony to the Church's teaching on the matter in hand is so unambiguous and trenchant that, in absence of any

Theologians, who defend our opinion, have found a confirmation of it in the history of Adonias, as recorded in 3 Kings ii. 13-25. This Adonias was a son of David and elder brother of Solomon the reigning monarch ; and he called upon Bethsabee, the mother of Solomon, for the purpose of asking her powerful intercession with his royal half-brother that he might be allowed to marry Abisag, his father's widow and consequently his step-mother. Therefore, say the aforementioned Theologians, it would seem more than probable that the Jews did not consider such marriage to be strictly prohibited by the natural law ; otherwise Adonias would never have dreamed of soliciting permission and dispensation from the king.

This argument has received a twofold answer. Some affirm that David was not married to Abisag. But this can hardly be maintained ; since the Commentators generally, with S. Jerome, Procopius, Theodoret, &c., affirm that he was.¹

By far the greater number of those Theologians who impugn the truth of our present proposition admit the fact of the marriage ; but assert that, on account of the enormity committed by Adonias in venturing on such a request, he was most justly put to death by his indignant brother. This supposes that Solomon was actuated in what he did by a righteous anger at such a contemplated violation of the natural law. But all the circumstances of the case, no less than the words of the king to his mother immediately before the execution, seem to exclude this interpretation of Solomon's motive in ordering his brother's present death. For Adonias, as eldest born and presumptive heir to the crown (save that the king's will, and possibly a Divine appointment, had set him aside), had already, during David's last illness, made his preparations ; and had even assumed regal state before his father's demise.

Agde, and that of Yenne ; indeed an important one, as regards the '*germanam sororem*.' The reader will do well to compare them. He will find the latter quoted in the second chapter of *The Issue*.

¹ "Verum Abisag fuisse uxorem Davidis passim docent cæteri interpretes" (i.e. excepto Abulensi) "ut S. Hieron. Procop. Theodor. Angelom. Lyran. Dionys. Serarius, Cajetan, Salianus, et Pineda."—*Cornelius à Lapide*, in 3 Regg. i. 4. Tirinus holds the same opinion ; Estius, the opposite.

of his meaning.

phase slightly different from that which we have just ascribed to him. It may be that he intended to shape his argument in some such way as this : S. Basil condemns in terms of the strongest disgust the case of marriage with a deceased wife's sister ; and he appeals, in justification of his censure, to the authority of the general prohibition in Leviticus xviii. 6. This evinces S. Basil's conviction, that the marriage in question was virtually included in that prohibition. But the unusual severity of his language shows us, plainly enough, that he considered such marriage to be an offence against the natural law. Therefore, in S. Basil's judgment, not only the particular prohibitions expressed in Leviticus xviii., but all those which are virtually included in the general prohibition as interpreted to us by the Anglican table, (i.e. all marriages of persons related by consanguinity or affinity within the second degree, direct or transversal, with the exception of half-brothers and sisters, first cousins, or cousins german in consanguinity, and in affinity, a wife's stepmother at least,) ¹ form part of the natural law, and are immutable.

In either case alike, the assertion is impugned.

Whether this be the Doctor's contention, or the other previously mentioned, in either case alike we impugn his conclusion, and proceed to exhibit the grounds of our dissent by a closer consideration of the Epistle.

The Levitical prohibitions not mentioned by Basil ; and intrinsic evidence of the letter against the Doctor's contention.

We notice, then, as a curious fact, that the degrees prohibited in Leviticus xviii. are not introduced by S. Basil at all. They are, however, alluded to by Diodorus, or the author of the letter ascribed to Diodorus, if it were not really his. The simple truth is that the Greek Doctor in no wise founds the main strength of his argument on the teaching of Leviticus, though he confirms it by quoting the general principle embosomed in the sixth verse. Nay, further ; when it was objected against him that there was in Leviticus xviii. 18, an apparently implied permission to marry a wife's sister after the death of the former, S. Basil answers the difficulty in three ways. First, he urges that " what things soever the law speaketh, it speaketh to them that are in the law " (Rom. iii. 19), not to us Christians, who rejoice in the liberty where-

¹ See God's Prohibition, &c. p. 15.

with Christ has made us free. His first answer, then, is not over favourable to Dr. Pusey's line of argument. He adds, in the second place, that such permission is merely illative; and that such illations belong to the Legislator of right, not to the subject. Lastly, he declares that it was not the intention of the Legislator to include by name all kinds of vices and sins, but those only which were more common among the Egyptians and Canaanites, with whom the Jews had been brought into special contact; justifying his statement by the first verses of the chapter. We may say, in passing, that, with all due respect for S. Basil, we look upon this last to be a very weak argument, and based upon an erroneous estimate of the Law as delivered to the Jewish people.

The second point observable is, that S. Basil primarily and principally sustains his episcopal decision by an appeal to long-established Ecclesiastical usage. In other words he does not make his appeal to the old Law of Mount Sinai, but to what represented, to his mind at least, the Ecclesiastical law of the Christian Church.

Basil appeals to Ecclesiastical custom.

It seems strange that any one, who has thus written, should have been chosen to prove, that the prohibited degrees in Leviticus continue by a Divine sanction to be the degrees prohibited in the Christian Church, coupled with others contained therein by evident 'implication.' For S. Basil does not let drop one word, which can possibly be twisted into any support of such an assertion. Dr. Pusey has evidently felt himself the force of this objection; for in his pamphlet ("God's Prohibition of the Marriage with a Deceased Wife's Sister"), he has occupied six pages in the quiet endeavour to enervate its force. We must, however, confess that his hazy commentary, more than oracular in its obscurity, leaves the question precisely where it was found. One only tangible argument have we been able to discover. Dr. Pusey seems to limit S. Basil's declaration as to the abrogation of the Mosaic Law, and the liberation of Christians from its sanction, to the particular case of the implied permission to marry a deceased wife's sister. He thus dimly insinuates, rather than openly asserts this view in the following exegesis of S. Basil's words: "The law, 'Thou shalt not take a woman unto her sister,' &c., is

He does not assume the Levitical prohibitions as his rule. The Doctor tries to meet this difficulty, but leaves it where he found it.

abolished. Else, *by that same way of inference which men are so fond of when it favours laxity,*" (mark the old style,) "it would follow that polygamy is now allowable, except with the wife's sister. But since *it* is abolished, it is not lawful to argue by inference that what men suppose to have been allowed by *it* to the Jews, is allowed to Christians. That whole law is done away in Christ. Together with the law itself, all inferences which depend upon *it*, are done away also. We have no more concern with *that law* than we have with circumcision. *As we should not make any inferences as to ourselves from any law relating to circumcision*, seeing circumcision has been abolished, so neither from a law relating to polygamy, seeing polygamy has been abolished. This is S. Basil's argument," &c.¹

Refutation
of the
Doctor's
comments.

Now, with all respect for Dr. Pusey, we venture to assert that this is *not* S. Basil's argument, nor anything like it. Let the Greek Doctor speak for himself, "It is written, he (the objector) says, 'Thou shalt not take thy wife's sister for a harlot, to rival her; nec revelabis turpitudinem ejus, while she is yet living.' It is manifest from these words, he says, that a man is permitted to take her sister to wife, when she is dead. In answer to this I say, first of all, that 'whatever the law says, it says to those who are under the law,' otherwise we should be subjected to circumcision, and the Sabbath, and abstinence from certain kinds of food. For it is not right and proper that we should subject ourselves to the yoke of the law, if we have found something agreeable to our desires; but if anything seems burdensome in matters of the Law, that we should then take refuge in that liberty which is in Christ."

Who is there but perceives how invariably S. Basil, following in the wake of S. Paul, is using the word *law*, of the whole law delivered from Mount Sinai, and not of the particular precept under discussion? In a word, S. Basil applies the general principle of its abrogation to a particular difficulty; while Dr. Pusey limits his words, with the exception of a distant allusion to circumcision and polygamy (a statutory enforcement of which we have never been able to discover in the Pentateuch), to a particular abrogation of an individual

¹ P. 29. The italics are our own.

precept. The difficulty, which plainly enough beset the Doctor's path, is this; that the precept in question is found in the same catalogue, classed indifferently with those other prohibitions, for whose perpetual vitality he is, heart and soul, contending.

Bearing in mind that the reference to Leviticus was first made by Diodorus, our readers will judge for themselves, (for we give the letter at length in the appendix),¹ whether the argument of S. Basil may not be thus paraphrased. 'You quote in your favour,' he seems to say, 'a judicial precept out of Leviticus. But surely I need not remind you that Christians are freed from the observance of the Law. You might as well tell me that we ought to be circumcised, or to keep the Sabbath day, or to abstain from pork and other meats denounced as unclean in the Sinaitic code. Either the whole law is annulled, or it is wholly binding. It will never do to pick and choose;—accepting the authority of one particular precept because it accords with our irregular passions, and then, when the law is rigorous and burdensome to flesh and blood, to claim exemption from its requirements on the score that we are Catholics, made free from the law by the liberty which is in Christ. I appeal to the ancient Canonical regulations; but if you quote the Law, I can quote it too. For in that same chapter, out of which you have taken your supposed authority, it is written, "no man shall approach to her who is near of kin to him," &c.; and, remember, this general precept does, in fact, embody a dictate of the natural law, and, therefore, so far forth is of perpetual obligation!'

The real meaning of Basil paraphrased.

So much for the substance of S. Basil's argument.

We now proceed to another point included in the supposed testimony of this Eastern Doctor, which Dr. Pusey has mooted under the conviction that it tends to strengthen appreciably his position. We are the more inclined to submit it to the consideration of the reader, as it will help him towards taking the measure of the Doctor's solidity in matters of Patristic criticism. Dr. Pusey, then, contends that when S. Basil appeals, in confirmation of his Episcopal decision not to permit marriage with a deceased wife's sister, to "*the practice*

The Doctor contends that Basil referred to a universal, not local custom.

¹ Appendix E.

among us which has the power of a law, because these sacred laws have been handed down to us by holy men," he is referring, not to any mere local custom in his diocese, but to a custom universally received in the Catholic Church, and for that reason among others Apostolic.

The point of little importance to Catholics.

Now it matters little to the resolution of our main question, —though, of course, it was of the first importance to the cause which Dr. Pusey was mainly engaged in defending,—whether S. Basil was referring to the one, or to the other. In either case his authority for the inclusion of a deceased wife's sister in the prohibited degrees is taken, not from the Divine Law given from Mount Sinai, but from Ecclesiastical custom, or,—as we may call it, in view of the particular epoch,—from Ecclesiastical law, albeit for the most part unwritten. Under neither supposition can Dr. Pusey claim S. Basil in favour of his theory about the perpetual obligation of the precepts in Leviticus.

The question discussed.

However, we doubt the justice of Dr. Pusey's conclusion; and we must add that the arguments on this point produced by him are singularly inconclusive.

Who was it to whom Basil wrote?

We will, first of all, consider his statements concerning the author of the letter, to which that of S. Basil is a reply; for, as we shall see, this question has a direct and most important bearing on the judgment we are invited to pass as to the wider or narrower range of the custom alleged.

Dr. Pusey's statements on this head examined.

In the preface to his "Evidence" Dr. Pusey says that S. Basil's letter was written to "*one Diodorus*"; but as to "who this Diodorus was, we know absolutely nothing; in S. Basil's letter, from whom alone we know his name, there is no intimation whatever as to his abode or person."¹ We may remark parenthetically that in this respect Diodorus was not treated with exceptional disrespect by the Bishop of Cæsarea, as the latter was not in the habit of prefixing to his letters a biography of the person with whom he was in correspondence. However, is it true that S. Basil supplies us with no sort of information about Diodorus? We will for once in a way take Dr. Pusey as our guide. We are told in the aforesaid Preface, immediately after the sentence just

¹ Evidence, &c. Preface, xlix.

quoted, that "he had some influence, but on what grounds does not appear."¹ Is this absolutely nothing? But in the tract, or pamphlet, entitled "God's Prohibition of the Marriage with a Deceased Wife's Sister," we gain still further information; for our guide tells us that "Diodorus was in no way bound by the custom of S. Basil's diocese." Therefore he evidently did not belong to the Diocese of Cæsarea. This affords us some little light, if only in a negative way, about his abode. Well, then we read again that "S. Basil writes to him as an equal, whom he wishes to unite with him." Therefore he was in all probability a Bishop. Once more; we are told that "the letter in which he (*i. e.* Diodorus) had defended it was brought to S. Basil, and the person who brought it boasted of the authority of Diodorus, as a set-off against the judgment of S. Basil."² Therefore, if a Bishop at all, he must have been a Bishop whose judgment would do to stand side by side with that of the great S. Basil. He must, then, have enjoyed a more than ordinary theological reputation, and a recognized position in the Eastern Church. Thus, with Dr. Pusey's assistance, we are enabled to gather some valuable information both as regards his abode and person.

But this is not by any means all. For it is again Dr. Pusey who tells us, that "a Greek writer, Balsamon, about eight centuries after, identifies this Diodorus with the celebrated Diodorus, Bishop of Tarsus."³ The Regius Professor of Hebrew does an injustice as well to his own erudition as to the eminent person to whom he refers, when he contents himself with describing the latter simply and barely as "a Greek writer." Theodore Balsamon was, first of all, a deacon of the schismatical Greek Church in Constantinople, where he was keeper of the Ecclesiastical archives,—an office which must have given him free access to most important documents connected with the early history of the Eastern Churches; and if we may judge from the nature and value of his literary labours, he was nothing loth to take advantage of his opportunity. He was subsequently consecrated schismatical Patriarch of Antioch. His studies seem chiefly to have been directed to Canon law, as his principal work was a commentary

Balsamon says he was Diodorus, Bishop of Tarsus.

Dr. Pusey makes light of his authority.

¹ Evidence, &c. Preface, xlix.

² P. 24.

³ *Ibid.*

on the *Nomocanon* of Photius; and he wrote two other considerable works on the same subject. The former was republished at Oxford in 1672, with notes by Beveridge. Mosheim classes him among the most eminent Greek writers of the twelfth century, (he died A.D. 1214), and adds that "he employed great diligence, erudition, and labour, in explaining and digesting the civil and Ecclesiastical laws of the Greeks." Therefore, even though he had the misfortune to be born some eight centuries after S. Basil, this does by no means preclude the possibility of his discovering among the Greek records, or by help, it may be, of previous researches of Photius, with whose writings he must have been thoroughly conversant, whether the Diodorus of S. Basil was the Bishop of Tarsus or no.

Balsamon's
statement
confirmed by
the intrinsic
evidence of
Basil's
letter.

But what are we to say when we find, that this assertion of Balsamon exactly squares with those particulars about Diodorus, which Dr. Pusey has been enabled to obtain for us from the intrinsic evidence supplied by S. Basil's letter? He was a man, as we have seen, of considerable influence,—one that S. Basil treats as an equal,—one that he is anxious to propitiate,—a man of name and Theological learning,¹—yet he did not belong to the diocese of Cæsarea. But there was no Diodorus at that time, so far as we know, who at all answers this description, save the Bishop of Tarsus. So that, after all, the presumption is in favour of Balsamon's assertion. Why then is he dismissed so summarily? Perhaps the Doctor did not take kindly to a note of Balsamon on S. Basil's letter, in which he recapitulates the teaching of "the Great Father," as he devoutly calls him, in the following terse sentence;—"No attention to be paid to the laws of Moses." But, anyhow, it was hard to pass over so contemptuously the positive statement of a writer, not unknown to fame nor unacquainted with his subject. The real reason why Dr. Pusey is so anxious to preserve the Diodorus of S. Basil in his undeserved obscurity, is ingenuously confessed by himself. If Diodorus was Bishop of Tarsus, it was quite possible that his

¹ S. Basil's 135th Epistle is written to Diodorus, then priest at Antioch, on the occasion of the latter having sent the Saint two works which he had just published, and which S. Basil praises highly. Diodorus was the master of S. Chrysostom, S. Athanasius, and of S. Basil himself. There is a curious reference to him in Ep. ccxlv. n. 3.

letter might bear witness to a custom in his diocese, with regard to the marriage of a deceased wife's sister, altogether divergent from that of Cæsarea.

Now let us weigh the reasons given by Dr. Pusey for denying that S. Basil could possibly have referred in his letter to a mere local custom or tradition.

The Doctor's reasons for its not being a local custom examined. His own statement.

We will give his first argument in his own words. "A local custom," he observes, "not only forbidding but dissolving marriage, and excommunicating until the marriage should be abandoned, is utterly at variance with the principles of the ancient Church. Local customs there were, but not in matters of that grave character. No local custom could have this binding force. Those customs alone had binding force, which the whole Church everywhere inherited from the Apostles. Such customs were binding upon each, because they were binding upon all. . . . This reference of S. Basil to custom, and that, transmitted custom among Christians, is of the more weight, because elsewhere, where he speaks of the transmitted customs of the Church, he speaks of them as Apostolic."¹

This last sentence looks like a syllogism with,—what Logicians would call—an undistributed middle, or,—what is the same thing,—an affirmative conclusion in the second figure.

Illogical.

However, let us summarize the Doctor's statement; and then see what it is worth. He asserts that these could not be local customs in matters of so grave a character,—that they would not have such binding force, because not binding on all;—that *therefore*, in matters of such a grave character, they are binding on each, *because* binding on all. His words moreover seem to imply that only universal customs were Apostolic.

Summary of his argument.

Is Dr. Pusey serious? Has he forgotten the Quarto-deciman controversy which continued to agitate the Eastern and Western Churches well-nigh from the time of the Apostles up to the great Council of Nicæa, and indeed for some time after, spite of the decrees of that Council on the question? Surely this cannot be said to have been an unimportant matter, seeing that it affected the unity of the Church's ritual, and disturbed the whole order of Her Ecclesiastical year, besides

Refuted by reference to the Quarto-deciman controversy.

¹ *God's Prohibition*, &c. pp. 21, 22.

nurturing a deadly heresy,—that of the Ebionites,—before the first Ecumenical Council, and an obstinate schism after it.¹ Pope S. Victor, in the second century, deemed it of such importance, that he was on the point of excommunicating Polycrates, Bishop of Ephesus, and his adherents, on this account alone, had he not been dissuaded from it by the prayers and counsel of S. Irenæus.

Now the tradition of the Quarto-decimans was at least as clearly Apostolic as the tradition of Rome and of the Western Churches. The former celebrated their Easter, in accordance with the Jewish computation, on the fourteenth day of the month Nisan, no matter on what day of the week it might chance to fall. S. Polycarp came to Rome towards the middle of the second century, not improbably the only living disciple of S. John. This venerable Bishop of Smyrna was a Quarto-deciman; and when S. Anicetus, the Supreme Pontiff, urged him to conform, in the celebration of Easter, to the custom of the West, he replied that he could not be induced to abandon a practice "*which he had observed in common with S. John the disciple of our Lord, and the rest of the Apostles.*"² Polycrates, when threatened with excommunication by S. Victor, appeals to the authority of S. Philip, the Apostle, who died at Hierapolis in Phrygia, to that of S. John the Evangelist, of S. Polycarp, and of seven preceding Bishops of Ephesus, as sanctioning the Eastern tradition. He asserts that "*he is only following the rule of faith (κατὰ τὸν κανόνα τῆς πίστεως ἀκολουθοῦντες), and that in such a matter he is bound to obey God rather than man.*"³

Here was a tradition clearly Apostolic, belonging, says the imaginative Polycrates, to the rule of faith; yet never was it anything but local. But then was it so strictly binding? Why, S. Polycarp declined to violate it, even at the request of Christ's Vicar; and Polycrates was prepared to suffer excommunication rather than change this Apostolic constitution.

Let us now take an instance, in quite another direction, of an Apostolic precept, imposed on the whole Church, then falling into general desuetude, and finally settling down into a mere local observance. Nevertheless where it has been re-

no other
stance.
the Aposto-
; Canon to
stain from
being
ranged,

¹ The Audians.

² Eusebius, H. E. v. 24.

³ Ibidem.

tained, it is considered as binding still by virtue of its original Apostolic institution. We need not excuse ourselves to the reader for introducing a subject of such peculiar interest. and from blood.

The precept to which we allude, as we need hardly say, is contained in the canon promulgated by the Apostles in the first Council of Jerusalem, enjoining Catholics generally to abstain "from things strangled and from blood." (Acts xv. 20). If we are to adopt one of Dr. Pusey's hermeneutic canons, we must believe that this prohibition was of the gravest importance, since it is bracketed with two other prohibitions; one of which,—that which enjoins abstinence from idolatrous pollution,—undoubtedly forms part of the natural law, while the other,—directed against fornication,—is most generally held to come under the same category, and is undeniably a moral precept in the general meaning of that term.

The best summary we can give of the fortunes which attended this Apostolic injunction is to be found in the Commentary of à Lapide on the passage in the Acts of the Apostles, which accordingly we set before the reader in an English dress:

"This law was abolished by custom, since the dissension between Jew and Gentile ceased, when both united together in the one Church. Wherefore S. Austin writes that in his time it was no longer observed, *i. e.* among the Catholics of Hippo, and other neighbouring dioceses of Africa.¹ For some people after the time of S. Austin, out of reverence for the Apostles who had passed the law, observed it, and, in particular, the Greeks, (who even to this day observe it); as appears from the Council of Gangra, cap. 2, and from the Emperor Leo, in Novel. Constitut. 58, where he renews this law of the Apostles. But there were also some Latins, as the men of Orleans, (in the second Council of Orleans, cap. 20), and the men of Worms, Mentz, and other Germans, as appears from the Council of Worms, c. 65, and from Pope Zacharias, in

¹ Contra Faustum, L. xxxii. 13. S. Augustine is quite jocular about the matter. He asks: "Quis jam hoc Christianus observat, ut turdos vel minutiores aviculas non adtingat, nisi quarum sanguis effusus est? aut leporem non edat, si manu a cervice percussus, nullo cruento vulnere occisus est? Et qui forte pauci adhuc tangere ista formidant, a cæteris irridentur."

a letter to Boniface. But now that law for many hundred years has been abolished by contrary custom everywhere, with the exception of the Greeks."

summary of
refutation.

Thus, then, we find, on the one hand, that a custom may be Apostolic, of strict obligation in the estimation of those who are governed by it, yet purely local; while, on the other hand, an Apostolic law, at first of universal obligation, soon ceased to retain its primitive sanction and was generally disregarded, not by any direct repeal, but simply by virtue of a usage to the contrary which insensibly became universal in the Church. Now it is everywhere a dead letter, save within the limits of a schismatical communion. Is it possible to have clearer evidence of the utter unsoundness and futility of Dr. Pusey's proposed test?

The truth is that customs, so long as they are accepted as customs and for those to whom they are customs, have the force of law; and the measure of their obligation must be estimated by the gravity of the subject-matter that they affect, — by the relation, more or less close, which they bear, first of all, to the natural, and then to positive law. There is a direct analogy, in this respect, between custom and law, which allows of our legitimately arguing from the latter to the former. Now there is no law which has more varied at different epochs of Church history, and even, in the same era, relatively to different classes of persons, than those which relate to the prohibited degrees in the matter of marriage. In the earliest times the prohibited degrees would seem to have been less numerous, and the Ecclesiastical usage somewhat undefined and varying in various provinces or dioceses of the Church. The reader can hardly have considered the canons quoted in the preceding chapter with attention, and not have found sufficient material for forming a similar conclusion. This want of uniformity was a necessary consequence, on the one hand, of the influx of so many nations, with differing laws and customs, into the bosom of the Church, and, on the other, of the comparatively small number of Catholic families at the beginning of a people's conversion. As the Church grew, the number of prohibited degrees, as we know, increased, till their limits were finally regulated, as they have

expression to stand for a sort of moral incapacity,—a disinclination of the will arising from the unfitness of such a concession under ordinary circumstances.

d. Whether Innocent III. did really mean the one or the other, matters comparatively little to the question under debate; for his words are, as it were, parenthetical, tentative, but in no sense definitive, and are contained, moreover, in a Decretal which bears no marks of being an *ex cathedra* definition. Wherefore no Catholic Theologian would reckon them to be infallible.

“SIC PEREANT OMNES INIMICI TUI, DOMINE.”¹

¹ Judic. v. 31.

siastical prohibition, would have been guilty of a grievous sin. Yet, if a similar marriage were contracted now, it would be—as we all know,—perfectly valid and legitimate; whereas before the revision made by the fourth Lateran Council, the prohibition would have been as obligatory, as though it had chanced to be a case prohibited in the Levitical catalogue.

rious
stance of
Church's
nignity
wards
averts.

There is a singular instance, connected with this same matter, of the Church's indulgence towards infidels who receive the grace of conversion. There existed a doubt as to the validity of certain marriages contracted by Indians, and whether, in consequence, they were obliged, on their conversion, to adhere to the first among their numerous wives. Here was a question which seemed to involve the very essence of the marriage contract. Fr. De Lugo brought the case before the notice of Urban VIII., who gave for answer that, as there was a doubt and the opinions on both sides were probable, the missionaries were to follow that opinion which was the more favourable for the Indians. Further, Benedict XIV., than whom no more illustrious Canonist ever sat on the chair of Peter, gave the faculty of dispensation with respect to Gentiles or infidels who were polygamists; so that after their baptism they might retain any one, out of the number of their former wives, that they pleased, provided that she became a Christian, and provided also that the wife first married had expressed no desire to become a convert.¹ Dr. Pusey will not, of course, acknowledge the force of this illustration, as the two transactions were post-Tridentine; but they will, at all events, serve as an example of the clemency with which the Church treats those who are without, when the like difficulties arise in consequence of their conversion to the faith. We shall see in the sequel that it was precisely the same spirit which animated Pope S. Gregory the Great, in the decrees that he sent to S. Augustine for the government of the infant Anglo-Saxon Church.

We repeat, then, by way of conclusion, that neither a custom nor a law need be universal, in order to be invested with an obligatory force and a sanction of the gravest nature; and, in

¹ Cf. notulam (b.) P. Ballerini in n. 789. ejusdem operis, T. ii. p. 693.

sequence, it is vain to infer from the gravity of the obligation a necessary universality of the one or the other.

Dr. Pusey constructs another argument out of the peculiar wording of S. Basil's Epistle. He tells us in his fervent commentaries on this Greek Father, that *θεσμοί* mean 'sacred us.' He translates *ἄθεσμον*, 'unhallowed.'¹

Another argument of the Doctor from Basil's use of the word *θεσμός*.

Now we can discover, neither from the derivation of the words, nor from their classical use, nor from the particular age of S. Basil, any authority, save that of Dr. Pusey, for such an interpretation.

Refuted.

If we look to the derivation of the word, it is equivalent to the Latin, *statutum*, or statute,—anything that has been laid down by law; and *ἄθεσμος* would be, in like manner, *unstatutable*, *unlawful*. If again, we consult its classical use, we shall find that it is employed to express any kind of law or statute, whether affecting things human or things divine. All the Athenian laws, in the legislation of Draco, began with the word; so that, as the Lexicons tell us, the revisers of this code were called *θεσμοθέται*, who, therefore, according to Dr. Pusey's philology, ought to be saluted as 'hallowed Commissioners.' It is true that it is used to express Divine, as well as human laws; but in this respect it is not distinguishable from the cognate term, *νόμος*.

Still less authority is there, if possible, from the writings of Basil, for any such emphasized translation of the word. Confining our research to the three hundred and sixty-five epistles of that Father, we find that it is a word he rarely uses. We have been able to discover only five other places where it appears, and in no one of them is it applied to Divine legislation directly, but invariably to customs or laws ecclesiastical.² In the twenty-eighth Epistle (no. 1) he speaks of the delect Bishop of Neo-Cæsarea as being, *φύλαξ πατρίων θεσμῶν*; 'guardian of the statutes of the fathers.' In his seventieth epistle (no. 1), alluding to that Ecclesiastical charity which manifests in one the mystical Body of Christ, he uses the phrase *ἀρχαίας ἀγάπης θεσμούς*, the statutes of primitive charity;

¹ Evidence, &c. n. 445. p. 12; and God's Prohibition, &c. pp. 20-22.

² The examination has been comparatively cursory; so we cannot absolutely affirm that no other examples of its use in the Epistles may be found.

and similarly in the hundred and twenty-eighth letter (no. 3) κατὰ τοὺς παλαιοὺς θεσμοὺς τῆς ἀγάπης—according to the old statutes of charity. In the ninety-second letter (no. 2) he speaks of Ἐκκλησίας θεσμοί, the statutes of the Church. Finally in the hundred and thirtieth letter (no. 2), while denouncing the heretic Eustathius because of his reordaining those who had already received Orders in the Church, he expresses his grief at τῶν ἐκκλησιαστικῶν θεσμῶν τὴν στήγχεσιν—the violation of the Ecclesiastical precepts. If Dr. Pusey should chance to object that in two of these instances S. Basil uses the word of the precept of charity, which is Divine, we reply that the Bishop of Cæsarea did not select it for that reason, since in another (the hundred and fifty-fourth), he refers to τὸν τῆς πνευματικῆς ἀγάπης νόμον—the law of spiritual charity.

S. Basil has a prolific vocabulary, and in consequence uses several words for expressing the idea of law, precept, statute. He most commonly uses the word νόμος when speaking of the Divine Law, whether written or unwritten. But he abounds in other expressions, such as ἐντολή, (thus Ep. ciii. ἐντολὰς τοῦ Κυρίου, and in a multitude of other places); προστάγματα (Hom. in princip. Proverb. n. 5); σύνταγμα, νομοθεσία (very often). And he uses these indifferently of Divine, or merely Ecclesiastical precepts. There is, besides, another of much less frequent use, which he employs to designate a canon of the Nicene Council, διαταγή, (Ep. lv.).

The introduction, therefore, of the epithets, *sacred, unhallowed*, into the translation of θεσμός, and its derivatives, finds no sanction either in general philology, or in the particular usage of S. Basil.

Dr. Pusey seems to discover some latent confirmation of his argument in S. Basil's use of the word ἔθος; since we cannot otherwise understand the reason for his inserting it in the pages of his pamphlet.¹ Yet, if we are to trust at all to such mere verbal inferences, the selection of this word tells rather against him, than in his favour. For S. Basil is wont to use συνήθεια for an Ecclesiastical custom. (Epp. liii. n. 2; liv. clxxxviii. cann. 1, 3, 4, 9; clxxxix. n. 3; cxcix. can. 21; cclii., where it stands for the custom of making a pilgrimage to the

Another of the Doctor's arguments from Basil's use of ἔθος.

Refuted.

¹ God's Prohibition, &c. p. 21.

relics of S. Euppsychius in his Church.) On the other hand, the Greek Doctor uses *ἔθος* of customs in general, either Ecclesiastical or heretical, personally good, or personally bad.¹

We have another Greek word, used by S. Basil in his letter to Diodorus, which Dr. Pusey has signalized in his preface, *παπαδοθῆναι*—*to have been handed down*.² It would almost seem as if he imagined that this verb was only used of Apostolic traditions; if so, he is again mistaken. For S. Basil uses it of a tradition established by S. Gregory Thaumaturgus in *Libro de Spiritu Sancto*, c. xxix., and, again, in his two hundred and tenth letter (n. 3); while its synonym, *παπαδοχή*, is employed by him in his two hundred and sixty-third letter (n. 2), written to the Western Church, to express the common sentiment of that Church on a dogmatic subject. In the former case, the tradition in question could have been little more than a hundred years old.

Another, from Basil's use of the verb, *παπαδοθῆναι*.

Refuted.

Our readers will now be able to estimate at its true value the philological conclusion which Dr. Pusey draws from his philological premisses. "The similarity of the general argument," (which he discovers in certain passages from S. Basil's book on the Holy Ghost as compared with the letter under review. We leave the reader to discover any similarity, if he can. It is useless to protract our examination, where there is nothing to be gained), "the appeal to the force of this unwritten custom, in combination with the appeal to Holy Scripture," (there is no appeal to Scripture in the Epistle,—an appeal, properly so called. The quotation made is by way of retort), "the force which he speaks of its exercising, as rooted in the Church, the recurrence of the characteristic words 'custom,' 'sacred laws,' 'tradition' (*ἔθων*, or *συνήθειας*, *θεσμῶν*, *παπαδόσεως*), are in themselves a strong presumption, that in regard to the marriage of the deceased wife's sister also, the traditionary custom which he urged as of primary weight was one which the Church believed to have come from the Apostles."³

The Doctor's philological conclusion.

¹ Epp. ii. n. 2; clvi. 2; clxi. n. 2; ccxvii. can. 84. It is not to be denied that S. Basil uses also *συνήθεια* occasionally in the sense of a bad custom, or habit (v. Ep. ccxiii. 1); but it is much more rare.

² Evidence, n. 445. p. 12.

³ God's Prohibition, &c. p. 24.

Examined,
and rejected.

Thus, with subjects so far removed from each other as ~~are~~ an article of the Creed and the prohibition of a certain kind of marriage, with all the difference in style and thought necessarily existing between a dogmatic treatise and a confidential letter, because in both these documents the words, *statute, custom, tradition*, chance to have found a place, and because, in both, the testimony of Scripture is adduced, no matter how,—Dr. Pusey argues that, as the one avowedly embraces a Divinely revealed mystery, so the other must be dealing with a Divine commandment that forms part of the natural and unchanging law! It really seems to us, that the Doctor has been prodigal of his Greek type to little purpose. In a line or two he might have given us his major premiss, and so have done with it. Thus his proposition would read somewhat after this sort: Wherever S. Basil makes use of such words as, *custom, statute, tradition*, and their derivatives, in connection with practical matters, and at the same time introduces a quotation from the Scriptures, he is necessarily notifying a Divine precept that forms part of the natural law.

With such a premiss we could do wonders, and extend the dictates and obligation of the natural law in a way that would excite the wonder, if it could not win the assent, of all future ages.

The Doctor's
digressive-
ness.

However, we gladly pass from these profitless and empty inferences to a point of far more vital importance, though it introduces us for a while into a new order of thought. Our readers must not lay on us the blame of these digressions, though we have to pass now from history to philology, now from philology to Dogmatic Theology, then again from Dogmatic Theology to Patristic, without apparent logical sequence, or method. We are but following in the wake of those works that are passing under our review; and, in the midst of the confusion that reigns there, if we can manage to see the next step we are about to take, it is all that can be attempted, promised, or expected.

He adopts a
condemned
heresy as his
own; in
order to
make Basil
quote, as he

It is useful, if we can, to trace the underlying motive of these numerous extravagations, as we come across them; and in the present instance it is sufficiently obvious. Dr. Pusey has been sorely troubled to save this *custom* of S. Basil from being

considered,—what we have every reason for supposing that the Saint intended,—as purely local, or partial. S. Basil's wording was a perplexity. The judgment of Diodorus was another perplexity. From the latter he boldly frees himself, by dismissing the culprit as a person that we know nothing whatever about. But the former remains; and he confronts it by claiming the phraseology of the Greek Doctor as indisputable evidence to the truth of his contention. But how does he do it? First he shows that S. Basil has designated the custom as "something that has been handed down by holy men." Then it would seem that this Father uses the same expression where the tradition is probably Apostolic; therefore, in this instance also it must plainly be an Apostolic tradition. Proceeding a step further, in order to assist him to the second leap in his climb up "to the height of this great argument,"—the position, *i. e.*, that the tradition is based on Holy Scripture,—he patronizes a heresy which has been long ago condemned by an Ecumenical Council, and is expressly contradicted by the Father, whose doctrine he would interpret to us, in a passage which, by a strange fatuity, he has himself quoted in the very next page to that from which we are about to borrow.

thinks he
must an-
ought.

These are the words of the Oxford Professor: "When those customs were not attested by Holy Scripture, they were not essential to the faith. For Holy Scripture contained the whole faith. But when they related to what was contained in Holy Scripture, then, since these traditions were of Apostolic origin, they gave Apostolic sanction to that meaning of Holy Scripture which they attested."

The Doct
statemen

What are we to say to this dogmatic exposition? First, these customs are of Apostolic origin, because they are attested by Holy Scripture; then they are in Holy Scripture, because they are Apostolic traditions. Again; what is the meaning of the declaration that a custom is "*essential to the faith*"? The material object of faith does not ordinarily find a home for itself in *customs*, which relate, for the most part, to the actions of life and moral practice. Once more: In one clause it is affirmed that customs must be *attested by Scripture*, in order to be objects of faith; while in another clause we are

examined

told that it suffices, if they be "*related to what is contained in Holy Scripture.*" Is it the same thing to receive the attestation of the Divine Scriptures, and to be related to something contained in them? Why there is nothing in all Catholic Theology, moral, dogmatic, or ascetic;—there is no rite however minute, no rubric, no vestment, no Church ornament, no pictured window,—there is no sacramental, whether it be holy water, Agnus Dei, rosary, scapular, medal, blest candle, or the like, which is not related to something that is contained in Holy Scripture. Are all these things, then, Apostolic traditions, attested with a Divine sanction, and essential to the faith? The Christian Creed, at this rate, will grow to unusual dimensions, and will prove somewhat anomalous in the variety of its articles. Finally, we are assured that customs which are not attested by Holy Scripture, are not essential to the faith. Well, if they are attested by Holy Scripture,—we will not ask whether they are essential to the faith, for the idea is absurd,—but does it at all follow that they are unchangeable, or of perpetual obligation? How about the Apostolic precept, already discussed at some length, which forbids the faithful to eat things strangled, or the blood of any animal?

[is heretical
statement
condemned
by the Council
of Trent;

But these vague, unscientific propositions are of comparatively no importance, when compared with the heretical statement that "*Holy Scripture contained the whole faith.*" This error has been directly condemned by the Council of Trent. The Church of Christ, by that Ecumenical Synod, declares that saving truth and moral teaching "are contained in the written books and unwritten traditions which, either received from the Apostles as learnt from Christ's own lips, or handed down by the Apostles at the dictation of the Holy Spirit from hand to hand, have reached even unto us"; and at the end of the same decree she adds, "If any one should have knowingly and with deliberation despised the aforesaid traditions, let him be anathema."¹ What is most strange of all is that

and by
Basil.

¹ "Perspicuousque hanc veritatem et disciplinam contineri in libris scriptis et sine scripto traditionibus, quæ ipsius Christi ore ab Apostolis acceptæ, aut ab ipsis Apostolis, Spiritu Sancto dictante, quasi per manus traditæ, ad nos usque pervenerunt," &c. "Si quis . . . traditiones prædictas sciens et prudens contempserit, anathema sit."—*Conc. Trid. sess. iv.*

Dr. Pusey, as we have said, himself puts in evidence a passage from S. Basil, which directly contradicts his erroneous teaching. We will give his own translation: "Of these doctrines and preachings which are preserved in the Church, some we have from the written teaching, some we have received in mystery, having been transmitted through to us from the tradition of the Apostles; both of which have the same power unto godliness."¹ We add a passage from S. Chrysostom, which is parallel to that of S. Basil, and equally clear. "Hence it is plain," he says, "that they [*i. e.* the Apostles] did not hand down everything by letter, but many things also that were not written. And these latter are equally worthy of belief with the former. So then, let us consider the tradition of the Church as also worthy of belief. It is a tradition; inquire nothing further."² So, in like manner S. Austin, in the course of his argument against the Donatists on the question of rebaptizing heretics, objects to their argument derived from the authority of S. Cyprian, in the following terms: "Do not, therefore, bring against us (*i. e.* Catholics) the authority of S. Cyprian; but, as we do, hold to the example of S. Cyprian in preserving unity. For that question of baptism had not as yet been diligently and thoroughly treated; but nevertheless the Church retained that most salutary custom of correcting even in heretics themselves and schismatics what was wrong, not of repeating what had been given,—of healing wounds, not of curing what is healthy. I believe that this custom comes from Apostolic tradition; just as many things, which are not discovered in their [the Apostolic] writings nor in the Councils of those that came after them, yet, because they are retained by

And by S.
Chrysostom.

¹ "τῶν ἐν τῇ Ἐκκλησίᾳ πεφυλαγμένων δογμάτων καὶ κηρυγμάτων, τὰ μὲν ἐκ τῆς ἱγγράφου διδασκαλίας ἔχομεν, τὰ δὲ ἐκ τῆς τῶν ἀποστόλων παραδόσεως διαδοθέντα ἡμῖν ἐν μυστηρίῳ παρεξέμεθα· ὑπὲρ ἀμφοτέρων τὴν αὐτὴν ἰσχὺν ἔχει πρὸς τὴν εὐσίβειαν."—*De Spiritu So. c. xxvii. n. 66*; quoted by Dr. Pusey in *Prohibition*, §c. p. 22.

² "ἐντεῦθεν δῆλον ὅτι οὐ πάντα δι' ἐπιστολῆς παρείδουσιν, ἀλλὰ πολλὰ καὶ ἀγράφως· ὁμοίως δὲ καὶ ταῦτά ἐστιν ἀξιόπιστα· ὥστε καὶ τὴν παράδοσιν τῆς ἐκκλησίας ἀξιόπιστον ἡγώμεθα· παράδοσις ἐστὶ, μὴδὲν πλέον ζητεῖ."—*Hom. 4a. in 2 ad Thessal. n. 2.*

the Universal Church, are believed to have been handed down and committed [to Her] by them."¹

And again, more clearly, "as there are many things which are held by the Universal Church; and on this account are rightly believed to have been enjoined by the Apostles, although they are not found in writing."²

Father Franzelin, having quoted this last passage of St. Austin together with other Patristic authorities, makes the following comment: "As therefore the people of God from the very beginning up to Moses and from Moses up to Christ, and in the time of Christ and His Apostles, held in their faith and profession truths which were not committed to writing; so no less, after the Apostles and after the completion of the inspired Books, the Church, propagated by the Apostles, ever theoretically and practically professed certain truths as having been Divinely revealed, which She had received not in the Scriptures, but by tradition only."³

It has then, been, from the beginning, the teaching of the Catholic Church that a great number of Divinely revealed truths, forming part of the Christian Creed and, when suffi-

The Catholic
faith on this
point.

¹ "Nolite ergo nobis auctoritatem obijcere Cypriani ad baptismi repetitionem; sed tenete nobiscum exemplum Cypriani ad unitatis conservationem. Nondum enim erat diligenter illa baptismi questio pertractata, sed tamen saluberrimam consuetudinem tenebat Ecclesia, in ipsis quoque schismaticis et hæreticis corrigere quod pravum est, non iterare quod datum est; sanare quod vulneratum est, non curare quod sanum est. Quam consuetudinem credo ex Apostolica traditione venientem; (sicut multa quæ non inveniuntur in litteris eorum, neque in conciliis posteriorum, et tamen quia per universam custodiuntur Ecclesiam, non nisi ab ipsis tradita et commendata creduntur)" &c.—*De Baptismo contra Donatistas*, L. ii. c. 7. n. 12. p. 102. T. ix. Ed. Maur. Parisiis, 1688.

² "Sicut sunt multa, quæ universa tenet Ecclesia, et ob hoc ab Apostolis præcepta bene creduntur, quanquam scripta non reperiantur."—*Ibidem*, L. v. c. 23. n. 31. p. 156.

³ "Sicut ergo populus Dei inde ab origine usque ad Moysen et a Moyse usque ad Christum et tempore Christi ac Apostolorum habuit in sua fide ac professione veritates etiam non scriptas, ita non minus post Apostolos et post completionem librorum inspiratorum Ecclesia ab Apostolis propagata semper theoretice et practice profitebatur veritates aliquas tanquam divinitus revelatas, quas non in Scripturis sed sola traditione acceperat."—*De Divina Traditione*, *Thes.* xx. p. 217. See also P. Perrone, in *locis theologicis*, P. ii. sect. 2. c. i., where the first thesis is as follows: "Præter sacram Scripturam admitti necessario debent traditiones divinæ dogmaticæ ab illa plane distinctæ."

ciently proposed, necessary to be believed by all Christians on pain of damnation,—truths that can be found nowhere in the inspired Scriptures, but have been handed down by Divine and Apostolical tradition. To such revealed truths belong the doctrine concerning the nature, in great measure, and the number of the Sacraments, that which regards the nature and value of the Eucharistic Sacrifice, that of the veneration due to sacred images and pictures, the doctrine of indulgences, &c. Others, again, there are which are more or less obscurely revealed in the Bible, but are clearly taught and handed down to us by Divine tradition; as, *e.g.* the mystery of the ever-blessed Trinity,¹ the Immaculate Conception, sacramental confession, the hierarchical order, the doctrine of justification, the indissolubility of marriage.

If we would escape from the danger of falling into fatal error on this subject, it behoves us to have a clear idea of the nature of tradition, as well as of the different kinds or classes into which it is divided.

Tradition, in its widest signification, includes everything that has flowed forth from its first source, and, whether in writing or by word of mouth, has come down to posterity. If we take it in this sense, Christian tradition would embrace all that we learn whether from Holy Scripture, or from other authorized teaching. But, in its strict and more limited theological meaning, it stands for any doctrine pertaining to faith, morals, or discipline, which has from the first been transmitted by word of mouth or in practice.

Tradition
its nature
and kind

Traditions, in this latter sense of the word, may have for their object matters of faith and morals which have come down from Christ or His Apostles; and then they are called *dogmatic*, or Divine.

i. Either
dogmatic
discipline

There are other traditions which deal with mere matters of discipline, as instituted either by the Apostles or by the Church; and these are called *disciplinary*. They also go by the name of customs.

This latter class is divided into various subordinate kinds. For,

ii. Disci-
plinary tr-
ditions.

¹ We exclude, of course, the contested verse in S. John's first Catholic Epistle from the Scriptural evidence producible in favour of this mystery.

on the *Nomocanon* of Photius; and he wrote two other considerable works on the same subject. The former was republished at Oxford in 1672, with notes by Beveridge. Mosheim classes him among the most eminent Greek writers of the twelfth century, (he died A.D. 1214), and adds that "he employed great diligence, erudition, and labour, in explaining and digesting the civil and Ecclesiastical laws of the Greeks." Therefore, even though he had the misfortune to be born some eight centuries after S. Basil, this does by no means preclude the possibility of his discovering among the Greek records, or by help, it may be, of previous researches of Photius, with whose writings he must have been thoroughly conversant, whether the Diodorus of S. Basil was the Bishop of Tarsus or no.

Balsamon's
statement
confirmed by
the intrinsic
evidence of
Basil's
letter.

But what are we to say when we find, that this assertion of Balsamon exactly squares with those particulars about Diodorus, which Dr. Pusey has been enabled to obtain for us from the intrinsic evidence supplied by S. Basil's letter? He was a man, as we have seen, of considerable influence,—one that S. Basil treats as an equal,—one that he is anxious to propitiate,—a man of name and Theological learning,¹—yet he did not belong to the diocese of Cæsarea. But there was no Diodorus at that time, so far as we know, who at all answers this description, save the Bishop of Tarsus. So that, after all, the presumption is in favour of Balsamon's assertion. Why then is he dismissed so summarily? Perhaps the Doctor did not take kindly to a note of Balsamon on S. Basil's letter, in which he recapitulates the teaching of "the Great Father," as he devoutly calls him, in the following terse sentence;—"No attention to be paid to the laws of Moses." But, anyhow, it was hard to pass over so contemptuously the positive statement of a writer, not unknown to fame nor unacquainted with his subject. The real reason why Dr. Pusey is so anxious to preserve the Diodorus of S. Basil in his undeserved obscurity, is ingenuously confessed by himself. If Diodorus was Bishop of Tarsus, it was quite possible that his

¹ S. Basil's 135th Epistle is written to Diodorus, then priest at Antioch, on the occasion of the latter having sent the Saint two works which he had just published, and which S. Basil praises highly. Diodorus was the master of S. Chrysostom, S. Athanasius, and of S. Basil himself. There is a curious reference to him in Ep. cccxiv. n. 3.

of marriage, our recent survey of certain particular or provincial synods must have afforded abundant evidence that special enactments were repeatedly made, by which a marriage that was valid in one diocese, or for one special class of people, was declared invalid in another diocese, or for another class of people. So, in our own time, where the decree of the Tridentine Council on this point has been promulgated, clandestinity, or the attempting to marry without the solemnities required by the Church, (*i.e.* in the absence of the parish priest and of at least two witnesses), makes the marriage contract, in the case of Catholics, null and void; whereas, in places where that decree has not been published, the marriage is not invalidated.

These brief considerations as to the nature and various kinds of Ecclesiastical customs and traditions, will throw considerable light on the dark places in Dr. Pusey's nucleus of inferences. At the risk of going over old ground, we must give one example by way of illustration. The Doctor is hard at work with his nerveless argument, derived from the use of the word *custom*, (ἔθος). He proceeds thus: "The Council of Nice itself uses the word 'customs,' 'wont' of the ancient traditionary customs of the Church. 'Let the ancient customs (ἔθη) in Egypt and Libya and Pentapolis hold, that the Bishop of Alexandria should have authority over these, since this is customary (συνήθες) with the Bishop of Rome also,' &c. 'Since the custom (συνήθεια) and ancient tradition has prevailed, that the Bishop of Ælia (Jerusalem) be honoured,' &c."¹ (The italics are Dr. Pusey's).

Applicati-
to the
Doctor's
statement

Now here we have the word, *custom*, standing for traditions of a widely different character. The customs in Egypt, Libya, Pentapolis, were evidently local, not evidently Apostolic, and certainly not perpetual. The custom or tradition, as regards the supremacy of the Roman Bishop, was universal, Apostolic, perpetual; while the pre-eminence of the Bishop of Ælia, (a city which was built on the ruins of Jerusalem by Hadrian after the commencement of the second century,) could hardly have been Apostolic, (even though the succession from S. James

¹ God's Prohibition, &c. p. 22.

was uninterrupted), was patently local, and proved by the event to be only temporary. Another example is given at the tail of this passage, wherein a *ceremonial usage*, prevailing in some places at that time, is reprobated by the Nicene Fathers, because the custom (*συνήθεια*) has not handed it down. "*Just S. Basil's language*," exclaims the delighted Doctor. But even this is not enough to satisfy him. So he proceeds to quote from a dogmatic treatise of S. Basil a string of passages, in which the latter is referring to certain Divine and Apostolic traditions, directly bearing on the mystery of the ever-blessed Trinity; and the words, *usages, customs, traditions, statutes*, are there again, glistening, like jewels, in the midst of the Greek text.¹ Then, as it were to clench the matter, he introduces S. Paul, who, in the course of laying down certain rules for the guidance of the Corinthian Church about wearing long or short hair and the covering or uncovering of the head in church, chances to use the word *custom* (*ἔθος*).²

His absurd
conclusion.

And what is the conclusion? Why it is one almost too childish to chronicle;—that, because these words have been used *once* to express a Divine and dogmatic tradition, therefore they must always be so understood, no matter what the nature of the subject may be which they serve to express, and that most especially must they be so understood in S. Basil's letter to Diodorus.

Another
argument of
the Doctor
on the cus-
tom of Basil
not being
local, much
more solid.

But, in order to convince his readers that S. Basil could not be referring to a merely *local* custom in his celebrated letter, Dr. Pusey offers another argument which claims to be treated with far greater respect. This is how he puts it: "An appeal of this sort to the universal and traditional custom of the Church, would have had great weight against Diodorus; the practice of S. Basil's own diocese would have had none. Diodorus was in no way bound by the custom of S. Basil's diocese. . . . This offence had not arisen in S. Basil's diocese. S. Basil had not been asked to admit the custom into his own diocese. The subject of his own diocese would have been altogether irrelevant. . . . The tra-

¹ God's Prohibition, &c. pp. 23, 24.

² Ibidem, p. 25.

dition of S. Basil's diocese would have had force for S. Basil's diocese. But it would, in itself, have no weight, as a rule for other dioceses. What was one diocese to the whole Church? S. Basil was not one who would think that the whole Church was to adopt the practice of his single diocese, had it been indeed single."¹

At first sight this argument seems very telling; and it is undoubtedly one that requires examination. Indeed, if the story were precisely as Dr. Pusey puts it, there would be a certain amount of weight in the difficulty. But we venture to think that the Doctor is mistaken.

As Dr. Pusey puts it, very strong.

In a case like this, any one will see that if we can form a hypothesis, not inconsistent with the information contained in the letter, which would satisfy the difficulties proposed in the above passage, the argument loses its strength; and the impediment is removed, which seemed to prevent us from considering the custom in question to be merely local. But what, if the hypothesis exactly coincides with the tone and expressions of the letter?

A contrary hypothesis, to explain Basil's letter.

Such a hypothesis we now offer. Let us suppose that Balsamon was right, and that the Diodorus, who wrote the letter of which S. Basil complains, was the Bishop of Tarsus. Let us further suppose,—what Dr. Pusey justifies us in supposing, since he tells us that Basil treated him as an equal²—that Diodorus was bishop at the time when he wrote his famous letter. Tarsus was about a hundred miles distant from Caesarea of Cappadocia, S. Basil's episcopal see; and the dioceses were, as it seems, contiguous. So it may naturally be concluded that frequent intercommunication would occur, and intimate social relations occasionally arise between the Catholics residing in the two dioceses. The question of the lawfulness of marriage with a deceased wife's sister would most probably have not arisen before in those regions; for even now, when the Church numbers about two hundred millions of souls in Her Communion, application for dispensation to contract such a marriage is not an every-day occurrence. Let us suppose that the man who carried the letter of Diodorus

¹ God's Prohibition, &c. pp. 24, 25.

² Ibidem, p. 24.

to Cæsarea was anxious to contract such a marriage. He was himself in the diocese of Tarsus ; but his late wife's family was residing in, or near, Cæsarea. As he was anxious to marry the sister, and she was nothing loth, he writes to his bishop Diodorus, who gives permission for the marriage in his reply to the intended bridegroom. When he arrives at Cæsarea for the purpose of completing the espousals, he hears from the family of his bride elect, that they have made application to S. Basil, who denounces such union in the strongest and most indignant terms. So off he goes, with the letter of Diodorus in his hands, running S. Basil down, boasting far and wide of its contents, and flaunting it, as a flag of triumph, in the face of the Ecclesiastical authorities in Cæsarea. Thereupon S. Basil, whose natural sensitiveness of disposition had been morbidly increased by his continued troubles and ill-health, writes to the Bishop of Tarsus in tones of marked displeasure. He appeals to the long existing custom in his diocese, denounces the laxity of the opposite opinion, and concludes by praying that, however the matter may be treated at Tarsus, such an unlawful practice may not obtain circulation in his diocese.

Such inconveniences, arising from divergence of custom in contiguous dioceses, are not unfrequent now. The dioceses of Shrewsbury and Liverpool are only separated by the Mersey, over which boats are crossing from one side to the other, every quarter of an hour of the day and till late at night. It once happened that the respective bishops of the two sees selected, as most fitting for the application of the Papal dispensation to eat meat in Lent, different week-days, within their several jurisdictions ; so that, by crossing the river, Catholics could escape from the law of abstinence in their own diocese, and dine in the other where the day was indulged. The same difficulty might easily arise between the two dioceses of Westminster and Southwark. Would it surprise us, should such a circumstance provoke a warm correspondence, especially if one of the bishops chanced to be extremely sensitive, or of a naturally quick disposition ?

We have made a hypothesis ; but it is all that is required to show the possible compatibility of S. Basil's appeal to a

long-established custom and of his vigour of expression with the supposed fact, that the custom in question was simply local, or diocesan. But it would not be doing justice to the argument if we omitted to add, that there is considerable internal evidence in favour of our taking the hypothesis to be a true account of the incident. For, first of all, the bridegroom evidently belonged to the diocese of Diodorus. Why was he in Cæsarea? It hardly admits of reasonable doubt that he was the bearer of the letter. What took him, then, to S. Basil? His object is evident from his actions. Off he goes to the Bishop of Cæsarea to show him the permission he has obtained from Diodorus. He will not, however, leave it in his hands, but goes about with it, exhibits it everywhere in triumph, and makes little count of S. Basil's prohibition. Surely all this activity was not the result of a disinterested desire to obtain a change in the Ecclesiastical law with regard to this solitary prohibition? Then, why had S. Basil forbidden it; (as he seems to have done), if neither of the contracting parties was subject to his jurisdiction? Why is he so anxious that this supposed laxity should not invade his own diocese, and at that particular time, if neither bride nor bridegroom belonged to Cæsarea? Again; S. Basil, '*writing as to an equal*,' urges that, with their united forces, the Bishop of Tarsus and himself should put a stop to the circulation of the dispensing letter, lest it should do harm to those into whose hands it might fall. Why does S. Basil request the co-operation of Diodorus? What reason was there for this combined action, unless it were that the marriage in question happened to fall under their common jurisdiction? Lastly, at the end of his letter, S. Basil expresses a hope that his persuasions may prevail over the excitement of passion, or that, at least, the contemplated sin may be limited to the region where it is indulged, and may not invade his diocese: as though he said, "Do try and persuade them to break off this contemplated marriage, which I regard as incestuous and forbidden; but, if they will persist in the wedding, marry them in Tarsus, as you have given the permission, for I will not have it performed in my diocese."

our hypothesis gives the true story

¹ Dr. Pusey has called attention in a note (Evidence, &c. Preface, p. 1.), to a

siastical prohibition, would have been guilty of a grievous sin. Yet, if a similar marriage were contracted now, it would be, —as we all know,—perfectly valid and legitimate; whereas before the revision made by the fourth Lateran Council, the prohibition would have been as obligatory, as though it had chanced to be a case prohibited in the Levitical catalogue.

Various instances of the Church's benignity towards converts.

There is a singular instance, connected with this same matter, of the Church's indulgence towards infidels who receive the grace of conversion. There existed a doubt as to the validity of certain marriages contracted by Indians, and whether, in consequence, they were obliged, on their conversion, to adhere to the first among their numerous wives. Here was a question which seemed to involve the very essence of the marriage contract. Fr. De Lugo brought the case before the notice of Urban VIII., who gave for answer that, as there was a doubt and the opinions on both sides were probable, the missionaries were to follow that opinion which was the more favourable for the Indians. Further, Benedict XIV., than whom no more illustrious Canonist ever sat on the chair of Peter, gave the faculty of dispensation with respect to Gentiles or infidels who were polygamists; so that after their baptism they might retain any one, out of the number of their former wives, that they pleased, provided that she became a Christian, and provided also that the wife first married had expressed no desire to become a convert.¹ Dr. Pusey will not, of course, acknowledge the force of this illustration, as the two transactions were post-Tridentine; but they will, at all events, serve as an example of the clemency with which the Church treats those who are without, when the like difficulties arise in consequence of their conversion to the faith. We shall see in the sequel that it was precisely the same spirit which animated Pope St. Gregory the Great, in the decrees that he sent to St. Augustine for the government of the infant Anglo-Saxon Church.

We repeat, then, by way of conclusion, that neither a custom nor a law need be universal, in order to be invested with an obligatory force and a sanction of the gravest nature; and, in

¹ See *Tridentine Decrees*, by F. De Lugo, in 2 vols. p. 100.

place, he appeals to the instinctive feeling (πρόληψις), that is common to all men,—to that natural, untaught habit of mind (τῇ ἀδιδάκτῳ ἔθει), found even among the heathen, which shrinks from such marriages.

While, then, no argument has been produced which is of weight sufficient to convince us that S. Basil was speaking, in his letter to Diodorus, of a universal custom, there is, on the other hand, the strongest internal evidence from the letter itself for concluding that the custom was merely local. First of all, there is the expression, "*the custom which obtains with us*" (τὸ παρ' ἡμῶν ἔθος). Now, if we consider that the Saint was writing to the bishop of a neighbouring diocese concerning a marriage which the former opposed, (while the latter permitted), on the score that there was a time-honoured custom or sentiment against it; the expression, *which obtains with us*, can hardly be otherwise understood than as expressing a limitation of the custom to the Bishop of Cæsarea's own diocese. Let us suppose for one moment that it had been universal in the Church; is it probable that S. Basil would have thrown his complaint into its present shape? Would he have set forth the authority of a usage, which would have been as well known to Diodorus as to himself? Would he not, on the contrary, have directly confronted the Bishop of Tarsus with his contravention of a custom everywhere prevailing? Would he not have most justly reminded him that such universal custom was as binding at Tarsus as in Cæsarea?

Consider evidence convince that it was merely local

But let us grant that the expression might mean, *the custom that obtains among us Catholics*, and ignore, for the sake of argument, the inference just made; how is it that S. Basil, at the close of his letter, urges that at all events a marriage of that kind "*may permanently remain in those parts where, if so be, it has been boldly undertaken*" (ἐν οἷς ἂν ἐτολμήθη τόποις ἐναπομεῖναι), and that it may not find an entrance into his diocese? Surely this is not the way in which the zeal of S. Basil would have prompted him to write, if a universal usage or precept of the Church had been violated at Tarsus or anywhere else?

The point, however, is of comparatively little moment to us; for, even if the Greek Doctor had been referring to a custom

The point of no importance.

universally received in the Church, his letter would not be one whit more favourable to Dr. Pusey's contention.

3. Basil's
letter proves
nothing.

We conclude, then, our remarks upon S. Basil's famous Epistle by reminding our readers that it altogether fails to prove any one of the main propositions which the Oxford Professor is endeavouring to maintain. It does not intimate in any way, direct or indirect, that the prohibitions in Leviticus continue, by virtue of their primitive Divine sanction, to retain their obligatory force in the Church of Christ. It does not intimate that these prohibitions with their equivalents, and none but these, form part of the natural law; nor does it hint that they are, as a consequence, unchangeable, and therefore incapable of becoming subject to a dispensation.

This letter of S. Basil is Dr. Pusey's golden statue. And he triumphantly sets it up on high, in the midst of his little theological empire, "with the sound of the trumpet, the flute, and the harp, of the sackbut, and the psaltery, of the symphony, and of all kind of music." But it has utterly failed to exhibit those claims to worship which he has made on its behalf; and we, as foreigners, must claim our privilege of exemption.

It is plain that S. Basil affords no support to the new theory; so let us see if we can get anything more satisfactory from the second witness, a great, perhaps the greatest Doctor of the Western Church.

The Oxford Professor presents us with four passages, in all, from the works of S. Austin.

The testi-
mony of
S. Austin.

I. The first is taken from his *work against Faustus*, the Manichean. But, as the quotation is only illustrative and does not bear upon the Theological theory that we are engaged in refuting, we may pass it by.¹

II. The second is to be found in his great work "*on the City of God*." But as we shall be under the necessity of referring to it at length a little further on, and it cannot be made, by any ingenuity of treatment, to produce one syllable of evidence in favour of the Doctor's assertions, we will allow it to rest undisturbed for the present.²

¹ Evidence, &c. n. 434. p. 9. The quotation is from the work *Contra Faustum*, L. xxii. c. 61.

² *Ibidem*, p. 8, and n. 445. p. 14. The quotation is from the *De Civitate Dei*, L. xv. c. 16.

III. The third quotation is immediately connected with the present question ; as it *ex professo* discusses the special prohibitions in Leviticus. We will first of all, therefore, give it, exactly as it lies imbedded in Dr. Pusey's evidence. Thus it runs :—

"In another work, supposed to have been written about A.D. 419, and so containing his maturest judgment, St. Augustine speaks of the prohibitions in Lev. xviii. as 'things without all doubt to be kept under the New Testament.' He raises the question, why the particular command (Lev. xviii. 19) is repeated here, whereas the act forbidden had already been sufficiently prohibited before ; and he says, 'Is it, perhaps, lest what was already said above should be thought to be understood figuratively, that it is set down here also' (c. xviii. the chapter containing the prohibited degrees), 'where *things of that sort are forbidden, as in the time of the New Testament also, when the observation of the ancient shadows is done, are certainly to be observed?*' (Quæstt. in Lev. qu. 64)."¹ The italics are Dr. Pusey's.

The quotation, as given by the Doctor.

As we are not satisfied with the Doctor's translation of the passage, we will, at all events, give our readers the benefit of a choice. It may be rendered thus :—

"For she was separated according to the law by reason of uncleanness. Since God had plainly enough forbidden it before (Levit. xv. 24), what is the meaning of his wishing to add it here to these same precepts ? Was it perchance, that a precept which had been already given in a former chapter, has—for fear people might imagine that it was to be taken in a figurative sense—been inserted here also, where prohibitions of such sort are given, as are without doubt to be observed under the New Covenant, wherein observance of the old shadows has been set aside ? This He would seem to have signified by the Prophet Ezechiel, who, among those sins which do not belong to ceremonial but to manifest wickedness, mentions this act also, and classes abstinence from it among the meritorious acts of justice ; (Ezech. xviii. 6 ; xxii. 10). And herein nature is not condemned ; but injury to the offspring is intended, (or, is what is prohibited)."²

Our translation.

¹ Evidence, &c. n. 445. p. 14.

² "*Segregabatur enim secundum Legem, propter immunditiam. Hoc cum*

There is no reason for saying it gives S. Austin's 'maturest judgment.'

We would premise one critical remark on the Doctor's statement, more for the sake of clearing away what looks like a rhetorical addition and is certainly somewhat inaccurate, than because it has any special bearing on the argument. Dr. Pusey speaks of these questions as containing S. Austin's "*maturest judgment*," because they were written in A.D. 419. Now, as the Saint did not die till A.D. 430 and wrote many of his works in that interval, it is reasonable to suppose that his judgment might have arrived at further maturity. As a fact, in his *Retractations*, which were written in A.D. 426 or 427, he corrects himself as to two of the questions which he discusses in this very work.¹

To resume: There cannot be a happier illustration of the observations, prefixed to this chapter, on the study of the Fathers and the difficulties that surround it, than this quotation from S. Austin; especially if we take it in the mounting with which it has been industriously set off. We cannot doubt that Dr. Pusey was highly satisfied with his authority; and we can picture to ourselves how Her Majesty's Commissioners, having that italicized sentence produced with solemn emphasis, or the casual reader, who has just seen the name of this Father in the Book of Common Prayer, would take it for granted that the question,—so far as Patristic authority goes,—was definitively settled.

Certain notes on the passage.

Well, let us examine the passage with a little care, and then see what we can make of it. For the sake of clearness, we will develop the whole difficulty (for a difficulty there undoubtedly is, whatever view we may take of the question) in an orderly series of notes.

superius satis sufficienter prohibuisset, quid sibi vult quod etiam hinc hoc eisdem præceptis voluit adjungere? An forte in superioribus quod jam dictum est, ne figuratè accipiendum putaretur, etiam hinc positum est, ubi talia prohibita sunt, quæ etiam tempore Novi Testamenti, remota umbrarum veterum observatione, sine dubio custodienda sunt? Quod videtur etiam per Prophetam Ezechielem significasse, qui inter illa peccata quæ non figuratæ, sed manifestæ iniquitatis sunt, etiam hoc commemorat, ad mulierem menstruatam si quis accedat; et inter justitiæ merita, si non accedat. Qua in re non natura damnatur, sed concipiendæ proli noxiæ perhibetur (*aliter*, prohibetur).”—*QQ. in Levit.* (L. iii.). Q. lxiv. S. Austin maintains this view of his in his work *de Peccatorum Meritis et Remissione*, L. iii. c. 12.

¹ *Retract.* L. ii. c. 55.

i. First of all, the question mooted by S. Augustine is concerning the precept in Leviticus xviii. 19, which, by universal consent in our time, is a precept partly ceremonial, partly judicial. It has, therefore, been annulled in the new dispensation of grace. Nor do we imagine that any Christian can be now found to maintain the contrary.

1. The subject-matter, not the matrimonial prohibitions.

ii. Yet the other prohibitions with regard to marriage within certain degrees of consanguinity and affinity are classed together with this ceremonial or judicial precept; and there is no verbal distinction made between the one and the other.

2. Yet the precept in question joined on to them.

iii. The particular difficulty, which S. Austin starts and tentatively solves in this question, arises out of the fact that the precept had been given already three chapters before; and it is not easy to see why it should be repeated in the eighteenth chapter.

3. Augustine's difficulty is about the repetition of the precept.

iv. The Bishop of Hippo suggests a solution of the matter by saying that, as it stood in the fifteenth chapter, it might have been mistaken, by reason of its surroundings, for a mere figurative or symbolical precept which has no claim on the obedience of Christians; and that, therefore, it is repeated among those things which must without doubt be observed even in the new dispensation of grace, and be thereby manifestly excluded from the category of those types and shadows which have been abolished.

4. He says it was put in again in Levit. xviii. to show, by its being there, that it was not abrogated.

v. This solution raises a much more serious difficulty than the one that S. Austin proposes to solve. For it would lead us at first sight to suppose that, according to the mind of the great Doctor of grace, this mainly ceremonial prohibition together with the matrimonial prohibitions form part of the natural law; and are, therefore, each and all, perpetually binding on us as Christians, unchangeable, and in consequence not subject to a dispensing power. If this were indeed his meaning, the universal consent of Christendom in our own times would be opposed to his opinion. But is it necessary to put such an interpretation on his words? We confidently answer in the negative; and the reason will appear, if we only allow him to explain his own meaning.

5. S. Austin seems to class it, and its companion, under the natural law.

vi. S. Austin tells us that by this precept "*nature is not condemned; but injury to the offspring is what the law has an*

6. Reason he suggests for this idea.

eye to, or prohibits." He was therefore influenced by a medical opinion, which, though probably maintained in his days, is now, we believe, generally rejected by the faculty. It is obvious that any exercise of matrimonial rights which should prejudice the end for which marriage was instituted, would be a sin against the natural law, and therefore irrevocably forbidden. The Saint was probably mistaken in his minor premiss, and therefore drew an erroneous conclusion.

7. The same reason, applied to the matrimonial precepts.

vii. The matrimonial prohibitions in Leviticus, *à pari*, are a special application to the Jewish people of a general principle contained in the natural law. They are, therefore, judicial precepts which have been annulled by Christ; but they are founded on a dictate of the eternal law which is of unceasing obligation.

8. S. Augustine's argument applies to the ceremonial precept equally with the others.

viii. If S. Augustine's authority, as supplied to us in this quotation, is sufficient to determine that the matrimonial prohibitions in Leviticus form part of the natural law, are binding on us by virtue of their primitive Divine sanction, and are thereby incapable of dispensation; the same must, by inevitable conclusion, be predicated of the precept contained in the nineteenth verse.

9. The Saint was possibly mistaken.

ix. Should such have really been the opinion of S. Augustine, he was mistaken. And, as in the case of the ceremonial precept which he was *ex professo* considering, the consent of Christendom would support us in dissenting from his particular view; so, as regards the matrimonial prohibitions, the decision of an Ecumenical Council would justify us in unhesitatingly rejecting his doctrine. For it is quite possible that he might have erred on this point, as he did err on the question of traducianism; whereas the Church cannot fall into error in matters either of faith or morals.

10. His difficulty and its confirmation baseless.

x. If we may say so, with all possible respect, the original difficulty ceases to be a difficulty on a close examination of the Levitical law; and the confirmation of his opinion, which S. Austin discovers in the prophet Ezechiel, is based on a double mistake,—a mistake in the principle, and a mistake in fact.

Repetition of precepts common in the Pentateuch.

For what concerns the original difficulty, there are multitudes of the Levitical precepts that are repeated in the same book. Thus, *e. g.* the greater number of the matrimonial prohibitions

in Levit. xviii. are repeated in Leviticus xx. We find the precept of abstaining from blood in Levit. iii. 17; vii. 26, 27; xvii. 14; xix. 26; Deut. xii. 16, 23; xv. 23. The precept enjoining the observance of God's Sabbaths is given in Levit. xix. 3, 30; xxvi. 2. Half of the ten commandments are repeated in Levit. xix., in the midst of precepts partly ceremonial, partly judicial.

(a.) S. Austin's canon is that, because the act prohibited in the debated precept is classed by the prophet with sins against the natural law, therefore it is a sin of the same nature. But if we apply such a canon to Levit. xix., it would follow that theft, idolatry, false swearing, are only ceremonial sins. It would also follow that cutting the hair roundwise, or shaving the beard, was an offence against the natural law (Levit. xix. 27; cf. vv. 26 [the latter clause,] and 29). This canon is a mistake, so far as the Old Testament is concerned.

S. Austin's confirmation from Ezechiel involves mistakes.

a. One of principle.

(b.) It is not true, as a matter of fact, that all the sins mentioned by Ezechiel in those two places are offences against the natural law. For it is not forbidden by that law to take "any increase" for loans in our commercial transactions (Ezech. xviii. 8); nor is it a manifest iniquity, apart from the positive Divine command, to profane the Sabbaths (Ezech. xxii. 8).

b. Another of fact.

xi. It must not be forgotten that S. Austin gives his solution tentatively, in the form of an interrogation.

11. The Saint's solution tentative.

xii. Nevertheless he categorically declares that the surrounding precepts are of perpetual obligation. There cannot be a doubt that this statement is true, if we look to the precepts contained in the *subsequent* context. And if we suppose it to include,—as it most probably does,—those likewise which form the *preceding* context, we can accept the statement so far as this; that those precepts are based on a principle of the eternal law,—that all of them prohibit matrimonial contracts which, *taken by themselves*, carry with them a certain moral unfitness and indecency,—and that, consequently, they have an intimate relation to the moral law.

12. He states that the surrounding precepts are perpetual; but which? and how understood?

To sum up in few words the result of our investigation: S. Augustine includes the particular precept which forms the subject-matter of his difficulty, together with the other

Summary of our answer.

precepts contained in that chapter, (of course, therefore, the matrimonial prohibitions,) in the category of Levitical statutes that are not merely ceremonial, but principally judicial. Consequently they are not entirely annulled under the new covenant, because they are the particular application of a principle which forms part of the natural law. This is in strict harmony with his own explanation given at the end of his question. But if he meant anything more than this,—if, which we do not believe, he intended to maintain that those special prohibitions of marriage within certain degrees of consanguinity or affinity formed part of the eternal and unchangeable law of nature, then S. Augustine fell into error; and we decline to follow him.

Another passage of S. Austin from his *Speculum*, or Bible lessons. Dr. Pusey's statement.

IV. The fourth quotation which Dr. Pusey produces from this Father, is made from S. Austin's Preface to his *Speculum*; and again we give it exactly as it is presented to us in *the Evidence*.

"And in a work yet later (A.D. 427), consisting of extracts from Holy Scripture, for popular use, as to 'those things, which, whether as commanded, or forbidden, or allowed, are so laid down in Holy Scripture, that *now also*, i. e. *the time of the New Testament*, they belong to the leading of a holy life and to morals' (Pref. ad *Speculum*), he gives at full length the laws from Lev. xviii." ¹ The italics are Dr. Pusey's.

Refuted.

It will not take us long to dismiss this last proof. For it rests upon the simple fact that these Levitical prohibitions are quoted in a little book of Scripture reading, adapted for the use of the laity, among other passages of the Bible "*which belong to the leading of a holy life and to morals.*"

It naturally occurs to ask how these last words are to be interpreted? They *may* mean, that the precepts, given in this *epicilegium* are Divine Laws which, one and all, bind the consciences of Christians; or they *may* mean that the compilation contains passages of Holy Scripture, bearing more or less on moral subjects, which will prove to be profitable reading, inasmuch as we can cull out of them hints towards the ordering of our life, and the formation of our moral character. But the question is, what *did* S. Austin mean? Which of these two

¹ Evidence, &c. n. 445. pp. 14, 15.

meanings did he wish to convey? We might almost leave it to Dr. Pusey's own decision; about the verdict of our readers we have not a particle of doubt. For in this collection of passages from Holy Writ are to be found the following:

"Eye for eye, tooth for tooth, hand for hand, foot for foot, Burning for burning, wound for wound, stripe for stripe." Exod. xxi. 24, 25. (The *lex talionis*.)

The comparison in which the Levitical prohibition finds themselves.

"If an ox gore a man or a woman, and they die, he shall be stoned; and his flesh shall not be eaten, but the owner of the ox shall be quit." Ibid. v. 28.

"If thou take of thy neighbour a garment in pledge, thou shalt give it him again before sunset." Exod. xxii. 26.

"Thou shalt not delay to pay thy tithes and thy first-fruits; thou shalt give the firstborn of thy sons to me." Ibid. v. 29.

"The wages of him that hath been hired by thee shall not abide with thee till the morning." Levit. xix. 13.

"When thou buildest a new house, thou shalt make a battlement to the roof round about, lest blood be shed in thy house, and thou be guilty, if any one slip, and fall down headlong." Deut. xxii. 8.

"Thou shalt not lend to thy brother money to usury, nor corn, nor any other thing, but to the stranger." Deut. xxiii. 19.

"When thou shalt demand of thy neighbour anything that he oweth thee, thou shalt not go into his house to take away a pledge; but thou shalt stand without, and he shall bring out to thee what he hath." Deut. xxiv. 10, 11.

If all these precepts form part of the eternal law, and are invested with an obligatory force, immutable and incapable of dispensation, (which Dr. Pusey's reasoning would compel us to conclude,) all we can say is that this page of the eternal law, with the exception of its first precept, is treated with little respect, not only by all the communions professing the name of Christ, but by every nation, tribe, people, and tongue, (save, if so be, the Jews), living on the face of the earth. We will venture to add that all these millions of prevaricators are remaining in absolute ignorance of the fact, that they are habitually violating the solemn dictates of what must be, on such hypothesis, the universal conscience. We should find no little difficulty in believing such universal ignorance and

depravity to exist; and it seems, therefore, that on the whole it would be less trying to the reason, were we to conclude that the second rendering of S. Austin's words is the true one.

. Ambrose,
he next
witness.

As Dr. Pusey had introduced S. Ambrose into his *Evidence* for the purpose of untying a knot,—which was difficult enough for him to essay,—connected with the Ecclesiastical prohibition of marriage with a first cousin, we had intended to reserve our notice of this Father for a succeeding chapter on the history of dispensations. But an answer of the Doctor, a little later on, obliges us to introduce the Saint at once. For when the former was asked, “*That was the general impression of the Church?*” (i. e. as explained by the preceding question, “*that the chapter of Leviticus adverted to, was a part of the moral law binding upon Christians,*”¹) he replies, “*Yes; of such of them as I have referred to, St. Basil, St. Ambrose, St. Augustine, St. Gregory.*”²

Evidently, then, the Doctor claims S. Ambrose as one of his witnesses. It is, by the way, a curious representation of a “*general impression of the Church,*”—this meagre catalogue of four Fathers. But, considering the nature of the subject-matter, we could afford to let this pass, if the testimony of four such witnesses,—all of them Doctors of the Church,—were definite and clear. So far, however, is this from being the case, that already we have been compelled to strike two off the list; and it now remains to see what S. Ambrose can do for this well-nigh hopeless cause.

As we shall stand in need, later on, of evidence contained in this Epistle, we cannot do better than, first of all, give it *in extenso*. It was written about A. D. 393, and is addressed to Paternus. From what S. Ambrose says, it is conjectured that the person addressed was the Count Paternus, signalized in the fourteenth law of Theodosius, to whom also Symmachus addressed five letters, to be found in the fifth book. This Count was anxious to arrange a marriage between his son and grand-daughter, or a daughter of the son's half-sister; which would be a marriage of an uncle with his niece. He, there-

¹ Evidence, &c. n. 470. p. 29.

² Ibidem, n. 471. p. 30.

upon, writes to S. Ambrose, asking his advice and opinion. The following is the Saint's reply :

" 1. I have read the greeting of my intimate friend *Paternus*, truly so called, but on a subject for consultation that is by no manner of means *paternal* ; (to wit, that you are thinking of uniting your grand-daughter on the daughter's side to your son) ; but, on the contrary, unworthy of yourself the grand-father of the one, the father of the other. Wherefore, consider well the nature of this business that you have consulted me about ; for in any matter that we have a desire to do, let us first put before ourselves the name of that act, and then we shall be able to determine whether it deserves praise or blame. For instance, . . . to slay an enemy, is victory ; a culprit, justice ; an innocent man, homicide ; which, if a man has present before his mind, he holds back his hand. Do you too, then, I beseech you, turn over in your mind what it is that is the object of your deliberation.

Translation
of his letter
to Paternus

" 2. You wish to arrange a marriage among our children. Now, I ask you whether equals or those who are not on an equality ought to be joined together. If I do not mistake, they are ordinarily called pairs. He who yokes oxen to the plough or horses to a carriage, chooses pairs, and tries to have them of the same age and form, and to avoid difference of nature or discrepancy of colour. You are thinking of uniting your

" 1. Paterni quidem unanimi mei salutationem legi, sed consultationem haudquaquam paternam ; ut velis filio neptem copulare ex filia : sed nec avo te, nec patre dignam. Itaque quid consuleris, considera ; omne enim quod agere volumus, prius nomen facti ejus interrogemus, et tunc utrum laude an vituperatione dignum sit, æstimabimus. Verbi gratia, misceri mulieri quibusdam voluptas est, medicorum etiam pueri (*aliter* periti) corporibus utile ferunt ; sed considerandum utrum conjugii, an extraneæ ; deinde nuptæ, an innuptæ. Si quis disponens sibi et tradita utatur, conjugium vocat ; qui alienæ expugnat pudorem, adulterium facit, cujus vel solo nomine reprimitur plerumque tentandi audacia. Hostem ferire victoria est, reum æquitas, innocentem homicidium ; quod si quis perspiciat animo, revocat manum. Ergo etiam tu quid consulas, quæso, tecum retractes.

" 2. Conjugium vis inter filios nostros componere. Quæro utrum pares copulandi, an impares sint ? Sed, nisi fallor, compares appellari solent. Boves qui jungit ad aratrum, equos ad currum, pares eligit, et ut ætas conveniat et forma, nec natura discrepet, nec decoloret diversitas. Tu copulare paras filium tuum, et neptem ex filia, hoc est, ut accipiat sororis suæ filiam, diversa licet matre quam socrus editus. Interroga nominum religionem : nempe avunculus iste illius, illa hujus neptis vocatur. Nec ipse te revocat sonus

son with your grand-daughter on your daughter's side; *i. e.* for him to take to wife the daughter of his sister, though it is true he was born of a different mother. Inquire into the sacred character of the titles of relationship. He is named her uncle; she, his niece. Does not the very mention of these names recall you to yourself, when he resounds in your ears the *avus*" (in the word, *avunculus*), "and she bears that name in relation to an uncle which she bears in relation to a grandfather?" (alluding to the double meaning of the word, *neptis*). "Besides, how great a confusion will there be in the other titles of relationship! You will bear the name of grandfather at once and father-in-law; she too will be saluted by the various names of your grand-daughter and daughter-in-law. Brother and sister will borrow other titles; so that she will be her brother's mother-in-law, he his sister's son-in-law. Let a niece be espoused to her uncle; and the unsullied affection of family ties must be exchanged for the allurements of a sensual love.

"3. You tell me, then, that the holy man, your bishop, is awaiting my opinion on this matter. I do not think or imagine it. For if it were so, he would have thought it incumbent on him to write himself; but, as he has not written, he shows plainly that in his judgment there could not be any possible doubt about the matter. For what room is there for doubt, seeing that the Divine Law forbids first cousins to marry, who are related in the fourth degree" (*i. e.* according to the *civil* mode of reckoning; ecclesiastically they are in the second degree). "But this is a case of the third degree,

nominum; cum hic avum resonet, illa hoc nomen ad avunculum, quod ad avum referat? Quanta deinde etiam reliquorum confusio vocabulorum? Idem avus et socer vocabere, ea quoque tibi neptis et nurus diverso nomine nuncupabitur. Mutuabuntur etiam fratres diversa vocabula, ut illa socrus fratris sit, iste gener sororis. Nubat avunculo suo neptis, et immaculatum pignorum caritas illecebrosus amore mutetur.

"3. Super hoc igitur meam a sancto viro episcopo vestro expectari sententiam dicis. Non opinor, neque arbitror. Nam si ita esset, et ipse scribendum putasset: non scribendo autem significavit quod nequaquam hinc dubitandum arbitraretur. Quid enim est, quod dubitari queat; cum lex divina etiam patruelios fratres prohibeat convenire in conjugalem copulam, qui sibi quarto sociantur gradu? Hic autem gradus tertius est, qui etiam civili jure a consortio conjugii exceptus videtur.

wherein marriage is plainly prohibited by the civil law." (Ecclesiastically it is in the first and second degree,—mixed.)

"4. But, first, let us inquire of the statutes of the Sacred Law. For in your letter you put forward the plea, that we must consider marriage to be permitted by this Divine Law to persons so related, because it is not prohibited. But I assert that it is prohibited; for when more remote relationship, such as that which subsists between first cousins is prohibited, much more, as I consider, is a relationship of closer kindred forbidden.

"5. But if you imagine that it is permitted for the reason that it has not been specially prohibited, you will not find in the words of the Law any prohibition against a father taking his daughter to wife. Is it therefore lawful, because it is not prohibited? Not at all; for it is forbidden by the natural law; it is forbidden by that law which is in the heart of each man; it is forbidden by the prescriptive claim of filial duty, on the score of intimate relationship. How many cases are there of this nature, which have not been forbidden in the law promulgated by Moses, and are yet forbidden by what I may call the voice of nature!

"6. And many things there are which it is lawful to do, but not expedient;—for all things are lawful, but all things are not expedient; 'all things are lawful, but all things are not to edification' (1 Cor. vi. 12). If then the Apostle recalls us from those things which do not edify, how can we

"4. Sed prius sacræ legis scito interrogemus; prætendis enim in tuis literis, quod permissum hoc divino jure connubium hujusmodi pignoribus existimetur, eo quod non sit prohibitum. Ego autem et prohibitum adsero; quia cum leviora interdicta sint de patruelibus fratribus, multo magis hoc quod arctioris est plenum necessitudinis, interdictum arbitror. Qui enim leviora adstringit, graviora non solvit, sed alligat.

"5. Quod si ideo permissum putas, quia specialiter non est prohibitum, nec illud prohibitum sermone Legis reperies, ne pater filiam suam accipiat uxorem. Numquid ideo licet, quia non est prohibitum? Minime; interdictum est enim naturæ lege, interdictum est lege, quæ est in cordibus singulorum: interdictum est inviolabili præscriptione pietatis, titulo necessitudinis. Quanta hujusmodi invenies non esse interdicta lege per Moysen edita, et tamen interdicta sunt quadam voce naturæ?

"6. Multaque sunt, quæ licet facere, sed non expedit; omnia enim licent, sed non expediunt; omnia licent sed non ædificant. Si ergo etiam ab iis nos revocat Apostolus, quæ non ædificant, quomodo faciendum putamus, quod et

think that we can do that which is not lawful according to the solemn voice of the Law, and is not to edification; while the right order of family affection is opposed to it. Nevertheless, those same old [precepts] which were more severe, have been softened down by the Gospel of the Lord Jesus. 'Old things are passed away; behold, all things are made new' (2 Cor. v. 17).

"7. What more sacred than the kiss between uncle and niece, which is due from the former to one who is as if a daughter, and from the latter to one who is as a parent! This kiss, then, of harmless affection you will cause to be suspected, when you contemplate such espousals; and you will snatch out of the hands of beloved relatives a most sacred symbol of affection.

"8. But if the Divine precepts leave you unimpressed, at least the injunctions of the Emperors from whom you have received the highest honours, ought by no means to fail of leaving their impression. For Theodosius, too, the Emperor, has forbidden first cousins on father or mother's side to unite together in the bonds of matrimony, and has by statute imposed the severest penalty, in case of any one daring to profane the sacred relationship of cousins. Nevertheless they are mutually equals. Only, because they are united by nearness of kindred and in the ties of cousinly intercourse, he willed that they should stand debtors to family affection because they are related by blood.¹

non licet Legis oraculo, et non aëdificat, discrepante pietatis ordine? Et tamen illa ipsa vetera, quæ fuerant duriora, temperata sunt per Evangelium domini Jesu: 'Transierunt vetera, ecce facta sunt nova.'

"7. Quid tam solemne quam osculum inter avunculum et neptem, quod iste quasi filiæ debet, hæc quasi parenti? Hoc igitur inoffensæ pietatis osculum suspectum facies de talibus cogitando nuptiis, et religiosissimum sacramentum caris pignoribus eripies.

"8. Sed si divina te prætereunt, saltem imperatorum præcepta, a quibus amplissimum accepisti honorem, haudquaquam præterire te debuerunt. Nam Theodosius imperator etiam patruos fratres et consobrinos vetuit inter se conjugii convenire nomine; et severissimam poenam statuit, si quis temerare ausus esset fratrum pia pignora; et tamen illi invicem sibi æquales sint; tantummodo quia propinquitatis necessitudine et fraternæ societatis ligantur vinculo, pietati eos voluit debere, quod nati sunt.

¹ Dr. Pusey tells us, "*It is supposed that the law of Theodosius, forbidding the marriage of first cousins, was upon the suggestion of St. Ambrose, but that is only conjecture.*" (Evidence, &c. n. 454. p. 16.) He is quite right in his observation

"9. But you tell me that a dispensation has been granted to some one. This, however, is no prejudice to the law; for where there is question of a general law, a dispensation affects the individual only; the odium is far otherwise. [That is, it affects all who are left out.] Nevertheless, we read in the Old Testament of a man calling his wife sister; the other is unheard of, that any one should take his niece in marriage and call her his spouse.¹

"10. Now it is all very fine your denying that your granddaughter is united by propinquity of blood to your son, her uncle, because she is not united by consanguinity on the mother's side. As if, forsooth, a brother and sister of the same mother but from different fathers could unite in marriage, on the plea that they are unable to claim the right of consanguinity on the father's side, but are connected with each other only on the score of consanguinity on the mother's side.

"9. Sed dicis alicui relaxatum. Verum hoc legi non præjudicat; quod enim in commune statuitur, ei tantum proficit, cui relaxatum videtur, longe diversa invidia. Illud tamen licet in Veteri Testamento legimus, ut aliquis uxorem suam sororem diceret; istud inauditum, ut quisquam neptem suam in uxorem accipiat, et conjugem dicat.

"10. Jam illud pulcherrimum, quod negasti neptem tuam avunculo suo tuo filio propinquo semini convenire, quia non agnationis² copuletur necessitudine. Quasi vero et uterini fratres, id est, diverso patre, sed eadem matre geniti, possint diverso sexu inter se in conjugium convenire; cum et ipsi agnationis jus habere non queant, sed cognationis tantum sibi titulo connexi sint.

that it is only conjecture; but he might have added with justice, a conjecture, for which no evidence, direct or indirect, can be produced. The Saint's manner of referring to the law in this letter does not certainly confirm such an idea. It is possible that Dr. Pusey received the knowledge of its existence from Bingham, who is, however, far less cautious in assuming it as a fact. He says: "I only observe further, that whereas the marriage of cousin-germans (sic) is reckoned incestuous in these canons, it was not so in the ancient laws of the Church, till Theodosius first made it so by the advice of St. Ambrose."—*Antiquities*, B. xxii. ch. 2. § 3.

¹ We have done our best to give a meaning to this paragraph in the letter; but it has all the appearance either of being corrupt, or,—as we think far more probable,—of having been written in such a hurry, and without revision, that the Saint has left us in the dark as to his meaning. The same must be said of the last clause of the preceding paragraph.

² It should be, *cognationis*. The reader should know that in the old civil as well as in Canon law, *agnatio* expresses kindred by the Father's side, and *agnati* are relatives on the father's side; but *cognatio* and *cognati* express relationship on the mother's side.

"11. Wherefore it behoves you to abandon your intention ; since, if it were lawful, nevertheless it would not spread your family. For our son by rights gives you grandchildren ; your very dear grand-daughter, great-grandchildren. Best wishes to yourself and all your family."

r. Pusey's
comment.

The following is Dr. Pusey's comment upon this letter. It is only fair to him that we should produce it by way of prelude to an examination of the evidence, which S. Ambrose is supposed to afford in favour of the Doctor's peculiar theory. These are his words :

"There is a difficult passage of St. Ambrose, in which, in arguing against a marriage between an uncle and a niece, which was the case in which he was applied to, he assumes, that by the law of God the marriage of first cousins was prohibited ; but whether it was a slip of memory in St. Ambrose I do not know. He certainly seems to mean an express prohibition in the words of Holy Scripture ; for against the marriage of an uncle and niece, which Paternus had pleaded for, 'as permitted by the Divine law, because not prohibited,' St. Ambrose argues *à fortiori* : 'But I assert that it is prohibited, for since the slighter as to first cousins are forbidden, much more do I deem this forbidden, which is full of a closer nearness.' He had said just before, 'the Divine law forbids first cousins to marry' ; and since he argues from this to a case not *expressed* in Holy Scripture, it would seem that he must have meant that *this* was expressed. So that it cannot be an inference from the general law, Lev. xviii. 6, for that would apply more strongly to the case of the uncle and niece. Persons have a difficulty in explaining the passage ; they do not know what St. Ambrose means."¹

the Doctor's
different
treatment of

It is sufficiently curious that the Oxford Professor makes no reference to this Father, in the passage just quoted, as affording evidence in his favour, but introduces him simply

"11. Unde oportet ab ea discedas intentione, quæ etiam si liceret, tamen tuam familiam non propagaret ; debet enim tibi filius noster nepotes, debet etiam neptis carissima pronepotes. Vale cum tuis omnibus."—Epp. *Classis 1a*. Ep. lx. ed. Maur. T. ii. p. 1017. Parisiis, 1690.

¹ Evidence, &c. n. 451. p. 16. The italics are Dr. Pusey's.

as a source of a difficulty connected with the subordinate question touching the inclusion or non-inclusion of first cousins in the Levitical prohibitions. Yet, further on, he slips the Saint's name into his brief as one of his four witnesses. However, as one of the arguments, by which S. Ambrose endeavours to dissuade Paternus from his design, seems at first sight to give some little countenance to one of the Doctor's propositions, we will bring out the points of the letter into due relief by the aid of certain notes.

this letter in different parts of his work.

i. We must, at the outset, remark that no more apposite example could be found in Patrology of the little claim which letters have, as a rule, on our attention, save as witnesses to contemporaneous history; unless indeed, as we have remarked before, they should be dogmatic letters *ex professo*, and intended for publication. Now it is plain that this Epistle to Paternus was confidential, and never intended for any eye but his, to whom it was addressed. It is evidently written *currente calamo*; and contains errors of fact as well as what are called clerical errors.

Certain | notes.
1. It is a private letter, with mistakes in substance and writing.

Unless we can save S. Ambrose,—and we are sanguine enough to think we shall succeed,—there is, first of all, the grave error which has so sorely puzzled the Doctor. Then there is an equally grave mistake, which admits of no explanation, where S. Ambrose asserts, that no one has ever heard (he apparently refers in particular to the Old Testament) of an uncle marrying a niece; whereas, as we have seen, instances are not uncommon. It will suffice to recall to mind the instances of Abraham¹ and of his brother Nachor. Then, for clerical errors, we have a sentence in the eighth paragraph to which we have attempted to give a conjectural meaning; but where it is more than probable that, in the hurry of writing, the Saint has let a clause slip. Lastly, there is that blunder of putting *agnatio* for *cognatio*. Who cannot

¹ S. Ambrose would seem to have dissented from the common view respecting the relationship of Sara to Abraham, if we may judge from a passage in which, referring to the former in the incident with the king of Egypt, he remarks "that to preserve her husband, *mentita est germanitatem*."—De Abraham, l. i. c. 2. n. 6. It must not, however, be forgotten that this is not the only instance of such a marriage recorded in the Old Testament.

see how unsafe and rash it must be to build up an argument upon a particular expression contained in such a letter?

2. Possible explanation of one mistake.

ii. We hazard the following explanation of "the first slip of memory in S. Ambrose,"—to adopt the Doctor's expression. The explanation seems to be probable enough in itself, while it spares us from the pain of supposing that the Saint could have made so gross a blunder in a part of the Old Testament, which must have been often before the eyes of a Catholic bishop in those early times of the Church's history as it has been ever since.

It is not at all unlikely that S. Ambrose was as puzzled as other people at the apparent repetition of the Levitical precept which forbids marriage with a step-sister. Why should the prohibition be again recorded in the eleventh verse, after having been already given in the ninth? Is it not within the range of possibility that in one of the two prohibitions *the sister* may mean *the cousin*? Such a use of the word ἀδελφή in the Greek, *soror* in the Latin, אחות in the Hebrew (Genesis xx. 2, 5, where it stands, as is commonly supposed, for a niece; certainly for some other relation than a sister), either for a relation in general, or—which is more common,—for a cousin in particular, is most frequent. But the prohibition in the eleventh verse cannot be so explained; for the relationship is expressly defined in the words, "*the daughter of a father's wife.*" Therefore let us look to the ninth verse. Here the word *sister* is used, and with the addition, "*on the father's or on the mother's side.*" Surely it is most natural to suppose that *sister* means *cousin* in this place; and so we have the plain prohibition to marry either kind of cousin,—*patrueles*, on the father's side, *consobrini*, on the mother's side.

Thus may S. Ambrose have reasoned with himself, and concluded, however erroneously, that the marriage of cousins was expressly prohibited in the Levitical code. But it matters little to the present argument; so let us proceed at once to examine the contents of this famous Epistle.

3. S. Ambrose's six reasons against the marriage.

iii. The reasons against the marriage contemplated by Count Paternus, which S. Ambrose brings forward, are six; and we give them in their order, as follows:

a. Marriage, as being the closest and tenderest of unions, ought to be contracted between equals. The universal consent of mankind bears testimony that this is an essential requisite in all ties of friendship, worthy of the name. It is symbolized by the common practice in the pairing even of animals.

b. These marriages of consanguinity involve a confusion of relationships, which contracts, instead of extending, (as marriage was intended to do), the bonds of social intercourse; because it gathers up into the person of one, different forms of kindred which, according to the teaching of a natural instinct, ought to be distributed among many.

c. Marriage with a niece is prohibited by the Divine or Levitical Law, not expressly indeed, but by plain inference. For as wedlock is there forbidden between first cousins, *à fortiori* that of an uncle with a niece must be considered as forbidden; seeing that the former is,—to use the language of Canon law,—within the second degree of consanguinity, whereas the latter is partly within the second, partly within the first.

Furthermore, if what is not expressly forbidden, is *ipso facto* permitted, (the argument of Paternus,) then marriage with a daughter is lawful; yet this latter is manifestly forbidden by the natural law.

Lastly, there are several cases of relationship, not expressly mentioned in the Sinaitic code, which are in some sort of a way repugnant to one's natural instincts; (*interdicta sunt quædam voce naturæ*).

d. There are many things that are lawful in the abstract, which are not expedient in the concrete, because of the scandal and jealousy that may arise.

e. There was danger that Paternus might incur the displeasure of the Emperors, to whom he was so highly indebted.

f. Such a marriage would not subserve the extension of his family.

iv. It merits careful attention that the question of granting a dispensation had, on the showing of Paternus, been entertained by his bishop, who was waiting to hear the opinion of S. Ambrose on the matter. And,—even if we feel inclined

4. Talk of a dispensation in the letter.

to side with S. Ambrose in his doubts as to the fact,—it is nevertheless incontestable that Paternus urges the plea of a dispensation having been already granted for such espousals, as a reason why the like permission should be extended to himself. Now, if S. Ambrose had believed that such a marriage was forbidden by a Divine law, whose obligation, *as a Divine law*, continued to bind the consciences of the faithful in the Church of Christ by an unchangeable authority incapable of dispensation, what would have been the natural, nay, the necessary reply? Would he not have said, “A dispensation from such a law! Impossible! Such a thing was never heard of. You must have been misled as to your information. There is no power on earth that can dispense you in such a case.” Yet, on the contrary, we see that he takes the matter quite coolly, argues on the supposition that the information of Paternus is correct, and forcibly points out that a dispensation is too often an individual advantage at the expense of a widely-extended odium. Such, at least, is the only interpretation which the obscure sentence referred to seems capable of bearing.

5. Examination of S. Ambrose's third reason against the marriage.

v. It only remains now to consider that third reason which S. Ambrose urges against the marriage contemplated by Count Paternus; as in it alone can we find anything which will serve Dr. Pusey's argument.

It is to be noticed, then, that the conclusion of S. Ambrose is based upon a false premiss. The marriage with a first cousin is not expressly prohibited in the Sinaitic code. It is strange too, that, in the hurry of the moment, S. Ambrose should have forgotten not only the instances, in the Old Testament, of uncles taking their nieces to wife, but also the fact that the Jews considered such marriage to be allowed *precisely because it was not forbidden in the Law*, and that in this they only followed the Rabbinical tradition.

The difficulty. S. Ambrose says that marriage with a niece is prohibited by Divine law.

Still, after all, the difficulty remains that the Saint asserts the marriage in question to be prohibited by the Divine law, and that he sets the Divine law before *us*, as a rule which he clearly supposes to be binding upon Christians. He cannot mean the Canon law, for he expressly refers to the Levitical precepts. What is there to be said in reply to this difficulty?

1. Every one must own that the Levitical prohibitions are historically Divine; *i.e.* that they claim God as their Author. "But surely," the reader may object, "this is not all that S. Ambrose means; for if the precepts in question had been annulled, how could he have been justified in appealing to their authority?" This is most true; and therefore we add,

The answer.
First. The
Levitical
precepts
historically
Divine.

2. That the Saint naturally appealed to their authority, because the Church, in the first centuries, (*i.e.* till the establishment of Christianity and the consequent respite from open persecution), would seem in most places to have simply adopted the Levitical code as Her own law; so that it was at once *historically* Divine, yet *binding* by Ecclesiastical authority. The Church of Christ had no time to construct Her Canon law, while She was still wrestling with Her Pagan adversary; and so She sheltered Her children temporarily under the ruins of the Temple. She may have also been partly induced to do so, from the desire to make no abrupt changes in such matters, lest She should put a stumbling-block in the way of Her recent Jewish converts. This would not be a solitary instance of so prudent an economy. Many instances might be adduced, especially from the discipline of the Eastern Church. It was long before the precept of abstaining from things strangled and from blood disappeared out of the Church's statute-book; and we find it even in the seventh century, among the *capitula*¹ of Theodore, Archbishop of Canterbury. Some might be inclined to think, not without reason, that the retention in this particular case was due to its having been formally reimposed by Apostolic authority. The same, however, cannot be said for the separation of women after childbirth, and their consequent exclusion from the Church, which nevertheless we find in the same *capitula*; ² nor for certain distinctions of meats, which are nevertheless enjoined in the same canons.³ But She would also more particularly be moved to adopt them, because they were given to the elect people by the Supreme Legislator, and also because, being limited to the second degree both of consanguinity and affinity, they had a closer connection with the dictate of the natural law, which was the basis of their construction.

Secondly.
These laws
had been re-
imposed by
the Church.

¹ Co. x. cv. cxix.

² C. xxi.

³ Co. x. ci. Labb. T. vi. p. 1875.

Thirdly. The Saint appeals to them for this reason.

Fourthly. He did not consider them to be of Divine obligation under the Gospel.

Fifthly. He does not say that such prohibitions form part of the natural law.

3. Therefore S. Ambrose appeals to them, because they had been accepted by the Church as the foundation of Her future Canon law upon this subject.

4. That S. Ambrose did not consider these precepts to bind Christians by virtue of their original Divine institution seems plain, not only because he admits into his mind the possibility of a dispensation, but also from the fact that, having appealed *clenchically* to the authority of the Old Law, he seems, as it were, to fear that he may be going too far, and stops himself, by remarking parenthetically that the severity of that Law has been mitigated by the Gospel, in which "*old things are passed away, behold, all things are made new.*"

5. S. Ambrose does not lead us to suppose that, in his opinion, the prohibition of marriage with a niece, or any of the Levitical prohibitions, form part of the natural law, and are therefore immutable. On the contrary, he seems to distinguish carefully between cases prohibited by the Divine, and those that are forbidden by the natural law. There is only one marriage which he specifies as forbidden by the latter, viz. that between a father and his daughter; while he alludes to others which are discountenanced, as he observes, by a sort of natural instinct. We shall see in the sequel that the post-Tridentine Doctors make an exactly similar distinction.

May it not, then, be fearlessly asserted that S. Ambrose does not add much to the weight of Dr. Pusey's proof?

S. Gregory the Great, the Doctor's fourth witness.

Dr. Pusey's statement.

Let us now proceed to examine the evidence of the Doctor's fourth witness, S. Gregory the Great, whose Pontificate closes the sixth, and inaugurates the seventh century. First of all, let us see what he is supposed to say in favour of the—by this time, at all events,—well-known propositions; and we cannot do better than let the Doctor put his own case. "The same distinction," he represents himself as telling the Commissioners, (*i.e.* "the distinction" which according to his statement a sentence before, was "preserved between degrees prohibited, or thought to be prohibited, by the Divine law and those of the Church, in that marriage within the former was dissolved, not within the latter") "is practically made by St. Gregory the Great a little before. He was consulted by St. Augustine of Canterbury, as to the degrees within which

marriage might take place, and, the English being newly converted, he prohibits the marriage of first cousins, but allows all degrees beyond. He mentions, also, that it was forbidden especially to marry one who had become by marriage 'the flesh of the brother.' "

The Commissioners thereupon press the Doctor to tell them which law it was that S. Gregory was referring to, whether to the Scriptural law, or to that of the Church. Dr. Pusey replies, "He infers the prohibition of the marriage of cousins from THAT law, as 'being of kin.' " He then quotes this Pope's decision in favour of the lawfulness of a marriage between two brothers and two sisters not akin to the former, "for nowhere in the sacred Scriptures is there found anything which may seem to contradict this." Next, he adduces another passage to the same effect, wherein S. Gregory remarks that "The Divine law forbids to reveal the nakedness of those who are 'near of kin.' " So, in the next answer, "Then afterwards he goes on to say, 'to marry with a step-mother is a grave offence, because it is written in the law, *Thou shalt not, &c.*' (Lev. xviii. 7). " ¹

Previous to an examination of this supposed evidence in Dr. Pusey's favour, it will be necessary to do what we have done before, and set before the reader the decretal of S. Gregory to which reference has been made in the preceding extracts.

S. Augustine had written to Rome, as people were somehow accustomed to do in those days when they had a difficulty, in order to put certain definite questions to the Pope for his direction in establishing ecclesiastical discipline within the newly-formed Anglo-Saxon Church, of which the former was the Primate. Among other matters, he had inquired, "Up to what degree of relationship the faithful may, consistently with duty, be united in marriage with their relations, and if it is lawful to be married to a step-mother and sister-in-law?"

In answer to this, his sixth interrogatory, S. Gregory replies

Occasion of
the Decretal
letter.

The text of
the letter
itself.

¹ Evidence, &c. nn. 460, at the end, and 461, 462. It would have been a useless trespass on the patience of our readers, if we had transferred these answers bodily to our pages; so we have given all that bears in any way on the present question.



of Riga, its
metropolis.

round that gulf which has borrowed its name, and is formed by one of the intrusions of the Upper Baltic, a little before its transformation into the Gulf of Bothnia, on the circumjacent continent. Its principal city is Riga, situate on the right bank of the Dwina, about nine miles from its mouth. There are comparatively few perhaps who remember, that Russia owes the existence of this her third greatest emporium, to a Cistercian Abbot, Bertold by name, who towards the close of the twelfth century succeeded Menard (or Mainard), the first Bishop of Livonia, and built this town for his future see. It was strongly fortified by his successor, Albert I., in great measure as a protection for the German colony against the sudden incursions of the native hordes, who at that time were savages, immersed in the lowest forms of pagan immorality and superstition.

Circum-
stances of
the Decretal.

In the year 1207, Innocent III., who was then staying at Viterbo, received the joyful news that, chiefly through the instrumentality of his zealous and devoted Legate, the Livonians had embraced the Catholic faith, and had been admitted to the Sacrament of Baptism. It was just about the same time that he received a letter from the Bishop of Riga (Albert apparently), about that question ever recurring in the case of newly converted nations, the incestuous marriages contracted while the neophytes were as yet pagans. It would appear that, unlike the Franks and German tribes, they had had nothing like a Salic law among them. For they were accustomed in their heathen days to marry their brothers' widows; nor, as it seems, were they too particular about the degrees of consanguinity. What was to be done, now that they were Christians? The Livonian Bishop seeks direction from the Pope; and he, in reply, grants his new children a dispensation, after the example of S. Gregory the Great in the case of the Anglo-Saxons, to marry in the fourth and remoter degrees for the time being, pronounces the validity of marriages contracted in the second and third degree before their conversion, and settles the point about marriages similarly contracted with a brother's wife, in the following terms.

Extract
from the
"Retal.

"Since the Livonians," he writes, "have been accustomed to marry indifferently their brothers' relicts, lest on that

c. In no degree of affinity is marriage invalidated by the natural law.

"Inter affines prohibetur jure naturæ noverca nubere privigno, non tamen est eo jure irritum, sed dispensabile a Papa ex causa et ab infidelitate conversi permanebunt in tali matrimonio cum noverca.

N. 5.

"Levitici xviii. non prohibetur ut unus vir ducat successive sororem primæ uxoris defunctæ; et certum est Papam posse in hoc dispensare; ut rite dispensavit cum Henrico VIII. Rege Angliæ et Catharina vidua Clemens Papa VII. de maturo consilio Cardinalium, et præmissa diligenti consultatione universitatum, quamvis quidam sine causa de ea re dubitarint.

N. 6.

"Nulla affinitas irritat matrimonium jure naturæ, sed jure ecclesiastico."

N. 10. n. 1.

6. THOMAS SANCHEZ, S.J.,

was born at Cordova A.D. 1551. He became a Jesuit at the age of sixteen, and was remarkable throughout a religious life of forty-three years for his great holiness. It is said that he wrote the whole of his principal work (De matrimonio) on his knees before the Crucifix. He died at Granada, A.D. 1610.

a. Explanation of Innocent III.'s 'non posse dispensare.'

De matrimonio, L. vii. disp. 52. n. 8. p. 146. T. ii. Viterbii, 1754.

"Ad c. Litteras dic. Papam dispensare non posse in illis gradibus, intelligi, id est, non debere, nec expedire, et constat sic accipiendum; quia statim additur ibi, non consuevisse Pontificem in illis dispensare; quod additum superfluum esset, si vere non posset. Et dixit, in gradibus præsertim divina lege prohibitis; quod quamvis ea lex divina cessarit, at in reverentiam divinæ legis, quæ aliquando de illis fuit, major eorum ratio habita est in aliquibus sacris canonibus."

b. The natural law annuls marriage in the first degree of consanguinity in the direct line.

Ibidem, disp. li. n. 8. p. 142.

"Apud omnes Doctores compertum est, matrimonium in primo gradu consanguinitatis linæ rectæ, nempe inter parentes et filios, esse jure ipso naturæ irritum."

c. The natural law does not annul marriage in the direct line of consanguinity beyond the first degree.

Ibidem, nn. 12 et seqq. pp. 143, 144.

"An prohibitio et irritatio matrimonii inter ascendentes et descendentes jure naturæ inducta protrahatur ad quemcunque gradum in infinitum? Affirmant quidam. . . .

N. 12.

"Cæterum probabilius est, ad aliquem gradum eam prohibitionem terminari. Ratio potissima est, quia cum consanguinitatis ratio sit participatio ejusdem sanguinis communicata a virtute generante stipitis, et hæc eo debilius reddatur, quo in plures generationes protenditur . . . nequit in infinitum extendi, sed tandem extinguetur ac deficiet. Ergo impossibile est in quacunque linea consanguinitatem in infinitum protrahi; ac subinde dicendum necessario erit, impedimentum hoc consanguinitatis in recta linea certis finibus, attento jure naturæ, contineri.

N. 13.

"Dato prohibitionem matrimonii in linea recta ascendentium et descen-

N. 15.

